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WHEN: Tuesday, July 10, 2012
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Title 3—

The President

Proclamation 8838 of June 14, 2012

World Elder Abuse Awareness Day, 2012

By the President of the United States of America

A Proclamation

Every American deserves the chance to live out the full measure of their days in health and security. Yet, every year, millions of older Americans are denied that most basic opportunity due to abuse, neglect, or exploitation. On World Elder Abuse Awareness Day, we call attention to this global public health issue, and we rededicate ourselves to providing our elders the care and protection they deserve.

Victims of elder abuse are parents and grandparents, neighbors and friends. Elder abuse cuts across race, gender, culture, and circumstance, and whether physical, emotional, or financial, it takes an unacceptable toll on individuals and families across our Nation. Seniors who experience abuse or neglect face a heightened risk of health complications and premature death, while financial exploitation can rob men and women of the security they have built over a lifetime. Tragically, many older Americans suffer in silence, burdened by fear, shame, or impairments that prevent them from speaking out about abuse.

We owe it to our seniors to expose elder abuse wherever we find it and take action to bring it to an end. Two years ago, I was proud to sign the Elder Justice Act, which was included in the Affordable Care Act, and marked a major step forward in the fight against elder abuse, neglect, and exploitation. With the Department of Health and Human Services, we are partnering with State and local authorities to ensure seniors can live their lives with dignity and independence. With the Consumer Financial Protection Bureau, we are working to empower older Americans with tools and information to navigate safely through financial challenges. And with the Department of Justice, we are protecting older Americans by prosecuting those who would target and exploit them.

Every day, State and local agencies, protective services professionals, law enforcement officers, private and non-profit organizations, and leaders throughout our communities help protect older Americans from abuse and provide care to those who have already been affected. Together, all of us can play a role in addressing this public health crisis that puts millions at risk. Today, let us keep faith with a generation of Americans by speaking out against elder abuse, advancing justice for victims, and building a Nation that preserves and protects the well-being of all who call it home.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 15, 2012, as World Elder Abuse Awareness Day. I call upon all Americans to observe this day by learning the signs of elder abuse, neglect, and exploitation, and by raising awareness about this public health issue.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of June, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2012–15170
Filed 6–19–12; 8:45 am]
Billing code 3295–F2–P

Presidential Documents

Executive Order 13616 of June 14, 2012

Accelerating Broadband Infrastructure Deployment

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and in order to facilitate broadband deployment on Federal lands, buildings, and rights of way, federally assisted highways, and tribal and individual Indian trust lands (tribal lands), particularly in underserved communities, it is hereby ordered as follows:

Section 1. *Policy.* Broadband access is essential to the Nation's global competitiveness in the 21st century, driving job creation, promoting innovation, and expanding markets for American businesses. Broadband access also affords public safety agencies the opportunity for greater levels of effectiveness and interoperability. While broadband infrastructure has been deployed in a vast majority of communities across the country, today too many areas still lack adequate access to this crucial resource. For these areas, decisions on access to Federal property and rights of way can be essential to the deployment of both wired and wireless broadband infrastructure. The Federal Government controls nearly 30 percent of all land in the United States, owns thousands of buildings, and provides substantial funding for State and local transportation infrastructure, creating significant opportunities for executive departments and agencies (agencies) to help expand broadband infrastructure.

Sec. 2. *Broadband Deployment on Federal Property Working Group.* (a) In order to ensure a coordinated and consistent approach in implementing agency procedures, requirements, and policies related to access to Federal lands, buildings, and rights of way, federally assisted highways, and tribal lands to advance broadband deployment, there is established a Broadband Deployment on Federal Property Working Group (Working Group), to be co-chaired by representatives designated by the Administrator of General Services and the Secretary of Homeland Security (Co-Chairs) from their respective agencies, in consultation with the Director of the Office of Science and Technology Policy (Director) and in coordination with the Chief Performance Officer (CPO).

(b) The Working Group shall be composed of:

(i) a representative from each of the following agencies, and the Co-Chairs, all of which have significant ownership of, or responsibility for managing, Federal lands, buildings, and rights of way, federally assisted highways, and tribal lands (Broadband Member Agencies):

(1) the Department of Defense;

(2) the Department of the Interior;

(3) the Department of Agriculture;

(4) the Department of Commerce;

(5) the Department of Transportation;

(6) the Department of Veterans Affairs; and

(7) the United States Postal Service;

(ii) a representative from each of the following agencies or offices, to provide advice and assistance:

(1) the Federal Communications Commission;

(2) the Council on Environmental Quality;

(3) the Advisory Council on Historic Preservation; and

(4) the National Security Staff; and

(iii) representatives from such other agencies or offices as the Co-Chairs may invite to participate.

(c) Within 1 year of the date of this order, the Working Group shall report to the Steering Committee on Federal Infrastructure Permitting and Review Process Improvement, established pursuant to Executive Order 13604 of March 22, 2012 (Improving Performance of Federal Permitting and Review of Infrastructure Projects), on the progress that has been made in implementing the actions mandated by sections 3 through 5 of this order.

Sec. 3. *Coordinating Consistent and Efficient Federal Broadband Procedures, Requirements, and Policies.* (a) Each Broadband Member Agency, following coordination with other Broadband Member Agencies and interested non-member agencies, shall:

(i) develop and implement a strategy to facilitate the timely and efficient deployment of broadband facilities on Federal lands, buildings, and rights of way, federally assisted highways, and tribal lands, that:

(1) ensures a consistent approach across the Federal Government that facilitates broadband deployment processes and decisions, including by: avoiding duplicative reviews; coordinating review processes; providing clear notice of all application and other requirements; ensuring consistent interpretation and application of all procedures, requirements, and policies; supporting decisions on deployment of broadband service to those living on tribal lands consistent with existing statutes, treaties, and trust responsibilities; and ensuring the public availability of current information on these matters;

(2) where beneficial and appropriate, includes procedures for coordination with State, local, and tribal governments, and other appropriate entities;

(3) is coordinated with appropriate external stakeholders, as determined by each Broadband Member Agency, prior to implementation; and

(4) is provided to the Co-Chairs within 180 days of the date of this order; and

(ii) provide comprehensive and current information on accessing Federal lands, buildings, and rights of way, federally assisted highways, and tribal lands for the deployment of broadband facilities, and develop strategies to increase the usefulness and accessibility of this information, including ensuring such information is available online and in a format that is compatible with appropriate Government websites, such as the Federal Infrastructure Projects Dashboard created pursuant to my memorandum of August 31, 2011 (Speeding Infrastructure Development Through More Efficient and Effective Permitting and Environmental Review).

(b) The activities conducted pursuant to subsection (a) of this section, particularly with respect to the establishment of timelines for permitting and review processes, shall be consistent with Executive Order 13604 and with the Federal Plan and Agency Plans to be developed pursuant to that order.

(c) The Co-Chairs, in consultation with the Director and in coordination with the CPO, shall coordinate, review, and monitor the development and implementation of the strategies required by paragraph (a)(i) of this section.

(d) Broadband Member Agencies may limit the information made available pursuant to paragraph (a)(ii) of this section as appropriate to accommodate national security, public safety, and privacy concerns.

Sec. 4. *Contracts, Applications, and Permits.* (a) Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (Public Law 112–96) contains provisions addressing access to Federal property for the deployment of wireless broadband facilities, including requirements that the General Services

Administration (GSA) develop application forms, master contracts, and fees for such access. The GSA shall consult with the Working Group in developing these application forms, master contracts, and fees.

(b) To the extent not already addressed by section 6409, each Broadband Member Agency with responsibility for managing Federal lands, buildings, or rights of way (as determined by the Co-Chairs) shall, in coordination with the Working Group and within 1 year of the date of this order, develop and use one or more templates for uniform contract, application, and permit terms to facilitate nongovernment entities' use of Federal property for the deployment of broadband facilities. The templates shall, where appropriate, allow for access by multiple broadband service providers and public safety entities. To ensure a consistent approach across the Federal Government and different broadband technologies, the templates shall, to the extent practicable and efficient, provide equal access to Federal property for the deployment of wireline and wireless facilities.

Sec. 5. *Deployment of Conduit for Broadband Facilities in Conjunction with Federal or Federally Assisted Highway Construction.* (a) The installation of underground fiber conduit along highway and roadway rights of way can improve traffic flow and safety through implementation of intelligent transportation systems (ITS) and reduce the cost of future broadband deployment. Accordingly, within 1 year of the date of this order:

(i) the Department of Transportation, in consultation with the Working Group, shall review dig once requirements in its existing programs and implement a flexible set of best practices that can accommodate changes in broadband technology and minimize excavations consistent with competitive broadband deployment;

(ii) the Department of Transportation shall work with State and local governments to help them develop and implement best practices on such matters as establishing dig once requirements, effectively using private investment in State ITS infrastructure, determining fair market value for rights of way on federally assisted highways, and reestablishing any highway assets disturbed by installation;

(iii) the Department of the Interior and other Broadband Member Agencies with responsibility for federally owned highways and rights of way on tribal lands (as determined by the Co-Chairs) shall revise their procedures, requirements, and policies to include the use of dig once requirements and similar policies to encourage the deployment of broadband infrastructure in conjunction with Federal highway construction, as well as to provide for the reestablishment of any highway assets disturbed by installation;

(iv) the Department of Transportation, after outreach to relevant nonfederal stakeholders, shall review and, if necessary, revise its guidance to State departments of transportation on allowing for-profit or other entities to accommodate or construct, safely and securely maintain, and utilize broadband facilities on State and locally owned rights of way in order to reflect changes in broadband technologies and markets and to promote competitive broadband infrastructure deployment; and

(v) the Department of Transportation, in consultation with the Working Group and the American Association of State Highway and Transportation Officials, shall create an online platform that States and counties may use to aggregate and make publicly available their rights of way laws and joint occupancy guidelines and agreements.

(b) For the purposes of this section, the term ''dig once requirements'' means requirements designed to reduce the number and scale of repeated excavations for the installation and maintenance of broadband facilities in rights of way.

Sec. 6. *General Provisions.* (a) This order shall be implemented consistent with all applicable laws, treaties, and trust obligations, and subject to the availability of appropriations.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) Independent agencies are strongly encouraged to comply with this order.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
Washington, June 14, 2012.

[FR Doc. 2012–15183
Filed 6–19–12; 8:45 am]
Billing code 3295–F2–P

Rules and Regulations

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2011–0117; Airspace Docket No. 09–AGL–31]

Establishment of Restricted Areas R–5402, R–5403A, R–5403B, R–5403C, R–5403D, R–5403E, and R–5403F; Devils Lake, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes restricted area airspace within the Devils Lake Military Operations Area (MOA), overlying Camp Grafton Range, in the vicinity of Devils Lake, ND. The new restricted areas permit realistic training in modern tactics to be conducted at Camp Grafton Range while ensuring the safe and efficient use of the National Airspace System (NAS) in the Devils Lake, ND, area. Unlike restricted areas which are designated under Title 14 Code of Federal Regulations (14 CFR) part 73, MOAs are not regulatory airspace. However, since the restricted areas overlap the Devils Lake East MOA, the FAA is including a description of the Devils Lake East MOA change in this rule. The MOA change described herein will be published in the National Flight Data Digest (NFDD).

DATES: *Effective Dates:* Effective date 0901 UTC, July 26, 2012.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace, Regulations and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On November 28, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Restricted Areas R–5402, R–5403A, R–5403B, R–5403C, R–5403D, R–5403E, and R–5403F in the vicinity of Devils Lake, ND (76 FR 72869). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. In response to public request, the FAA extended the comment period for 30 additional days (77 FR 1656; January 11, 2012). There were 43 comments received in response to the NPRM with 42 opposing various aspects of the proposal and one comment supporting the proposal as published. All comments received were considered before making a determination on this final rule. The following is a discussion of the substantive comments received and the agency's response.

Discussion of Comments

One commenter contended that the 500 feet above ground level (AGL) base for R–5402 would impact low level, aerial operations such as crop dusters, wildlife and agricultural surveys, and emergency medical access. The FAA recognizes that when active, R–5402 would restrict nonparticipating aircraft from operating within its boundaries. To mitigate impacts to the aviation activities described above, the United States Air Force (USAF) has agreed to implement scheduling coordination measures to de-conflict laser operations and accommodate access by local farming, ranching, survey, and medical aviation interests when they need to fly in or through R–5402, when it is active.

Another commenter noted that VFR traffic would have to circumnavigate active restricted airspace resulting in increased time and distances flown. The FAA acknowledges restricted area airspace segregates nonparticipating aircraft from hazardous activities occurring inside the restricted area and that, on occasion, nonparticipating aircraft affected by the restricted area will have to deviate from preferred routings to remain clear. The lateral boundaries and altitudes of the restricted area complex were defined to minimize impacts to nonparticipant aircraft, yet still support the military in accomplishing its training mission. The subdivided configuration of the restricted area complex, the altitude stratifications, and the entire restricted area complex designated as ''joint use,'' affords nonparticipant aircraft access to the portions of restricted area airspace not in use by the military to the greatest extent possible.

One commenter expressed concern that segregating airspace for new types of aircraft sets a dangerous precedent. The FAA agrees and maintains its policy to establish restricted area airspace when determined necessary to confine or segregate activities considered hazardous to nonparticipating aircraft. The FAA considers UAS operations to be non-hazardous. However, the FAA recognizes that some UAS platforms have the ability to employ hazardous ordnance or sensors. Since the MQ–1 Predator [UAS] laser is non-eye safe and will be used during training sorties flown by the military, its use constitutes a hazardous activity that must be confined within restricted area airspace to protect nonparticipating aircraft.

Two commenters suggested that Special Use Airspace (SUA) should be ceded back to civil control when not in use. The FAA proposed that the restricted areas be designated as ''joint use'' airspace, specifically to afford the highest level of access to NAS users and limit this access only when necessary. This rule provides that when the restricted areas are not needed by the using agency, the airspace will be returned to the controlling agency, Minneapolis Air Route Traffic Control Center, for access by other NAS users.

Another commenter recommended that the proposed restricted area airspace be developed for concurrent use. The FAA considered the commenters use of ''concurrent use'' to mean ''sharing the same airspace, at the same time, between participating and nonparticipating aircraft.'' As noted previously, restricted areas are established to confine or segregate activities considered hazardous to nonparticipating aircraft; such as dropping bombs, firing guns/missiles/rockets, or lasing with a non-eye safe laser. Concurrent use, as described above, would not be prudent in such an environment as it constitutes an unacceptable risk to nonparticipating aircraft.

Twenty-two commenters stated that the proposed restricted areas should

have been developed in conjunction with the North Dakota Airspace Integration Team (NDAIT), a group formed to find solutions to UAS integration into the NAS, as well as coordinate UAS activities state-wide. To clarify, the focus of this proposed action is consideration of establishing restricted areas to support hazardous military training activities, not UAS integration into the NAS. The FAA notes that the NDAIT was not established until after the USAF airspace proposal was submitted to the FAA and many of the NDAIT members took the opportunity to submit comments on the proposal.

One commenter stated that the proposed airspace should be environmentally assessed for the broad array of military aircraft that would be expected to employ in conjunction with UAS. The FAA agrees and has confirmed that the Environmental Impact Statement for the bed down of the MQ–1 Predator at Grand Forks Air Force Base (AFB) addresses other aircraft that would likely train with the UAS in the proposed restricted area airspace complex.

Another commenter stated that the proposed restricted area airspace would eventually be activated almost full time as is the current Temporary Flight Restriction (TFR) over Grand Forks AFB. The TFR referred to by the commenter is contained in the Special Security Instruction authorized under 14 CFR 99.7 for Customs and Border Protection (CBP) UAS operations conducted from Grand Forks AFB. Although the TFR is active while the CBP UAS is flying, it allows airspace access by non-participant aircraft using procedural separation rules. The restricted areas proposed by this action are being established with specific times of designation, to support the hazardous non-eye safe laser training conducted by the USAF. The times are described by ''core hours'' and also may be activated by NOTAM to allow for training periods outside the core hours, i.e. at night.

Twenty commenters argued that the proposal is contrary to FAA policy, in that it is designed for the sole purpose of separating non-hazardous types of VFR aircraft. The FAA has established this restricted area airspace to confine the MQ–1 Predator employment of a non-eye safe targeting laser, which is hazardous to nonparticipating pilots. This laser training for UAS pilots must be contained in restricted areas to confine the hazardous activity, as well as protect non-participating aircraft flying in the vicinity of the restricted areas. Even though the Predator operations in the restricted areas will normally occur in Visual Meteorological Conditions (VMC), the UAS will be on an IFR flight plan in accordance with U.S. Air Force requirements.

Two commenters requested that the FAA establish a formal, annual review process and public report on the use and impacts of any designated airspace associated with UAS activity in Grand Forks, ND. The request to establish a formal annual review process with public reporting on use and impacts falls outside the scope of this proposed action. However, the FAA has a Restricted Area Annual Utilization reporting program already established to assist the FAA in managing special use airspace areas established throughout the NAS. These annual utilization reports provide objective information regarding the types of activities being conducted, as well as the times scheduled, activated, and actual use, which the FAA uses to assess the appropriate use of the restricted areas.

Nineteen commenters recommended that proposed restricted airspace have a ''sunset'' date. The restricted areas are established to confine hazardous non-eye safe laser training, which will continue as long as the Predator UAS are operating from Grand Forks AFB. Technology developments to integrate UAS into the NAS with manned aircraft, as well as military Tactics, Techniques and Procedures (TTP) maturation may provide an opportunity to reconfigure the restricted area airspace at a future date, but the requirement for restricted area airspace will exist as long as the non-eye safe laser training is conducted.

One commenter recommended a requirement for equipping the UAS with forward viewing sensors that would enable the UAS to comply with 14 CFR part 91 see-and-avoid rules. While the FAA is working with the industry to develop see-and-avoid solutions for the safe and eventual seamless integration of UAS into the NAS, this suggestion is outside the scope of this action.

One commenter asked that the proposal be tabled until the FAA publishes its final Order/Advisory Circular regarding UAS operations in the NAS. The Order/Advisory Circular address the integration of UAS in the NAS, which is separate from the action of establishing restricted area airspace to confine hazardous non-eye safe laser training activities. This action is necessary to support the military's training requirement beginning this summer. The FAA is completing this airspace action separate from its UAS NAS integration guidance development efforts.

Several commenters recommended that instead of creating new SUA for these activities that the USAF use existing restricted areas or the airspace subject to flight restrictions under § 99.7 SSI and used by the Customs & Border Protection Agency (CBP) at Grand Forks AFB. The FAA advocates the use of existing SUA and requires proponents to examine all reasonable alternatives, prior to considering the need to establish new SUA. In this case, the USAF conducted an extensive analysis of alternatives and considered criteria including proximity to Grand Forks AFB, existence of a suitable air-to-ground range for laser targeting, and air traffic density both en route and at the training complex. The Beaver MOA in north central Minnesota is approximately three times as far as the proposed airspace, has much heavier air traffic density, and has no air-to-ground gunnery range. The Tiger MOAs in north central North Dakota are the same distance as the proposed airspace, have favorable air traffic density, but have no air-to-ground gunnery range. The airspace in the vicinity of the existing CBP § 99.7 SSI flight restriction would be closer, but has much higher traffic density and complexity, and has no air-to-ground range. Additionally, there were no useable restricted areas within reasonable distance of Grand Forks AFB for consideration. The FAA believes the USAF considered and analyzed the alternatives to this action and that establishing new SUA is the only reasonable option.

One commenter suggested that the restricted area complex be moved north of Devils Lake. The FAA notes that the USAF studied an alternative of establishing restricted areas in the Tiger North and Tiger South MOAs, located north of Devils Lake, ND. While proximity to Grand Forks AFB and the air traffic density compared favorably to the proposed airspace area, the lack of an air-to-ground gunnery range suitable for hazardous laser training made this option operationally unfeasible. The FAA accepted the USAF's consideration and analysis of this alternative and proposed establishing the restricted areas set forth in this action.

One commenter recommended that the proposed airspace be moved to another state as it would impact flying training in the vicinity of Grand Forks. This airspace proposal resulted from Congress' Base Realignment and Closure Commission of 2005 decision to retain Grand Forks Air Force Base in North Dakota for an emerging UAS mission. As addressed previously, Beaver MOA in north central Minnesota is the nearest SUA outside of North Dakota. It was approximately three times the distance from Grand Forks AFB, has much higher

air traffic density airspace, and has no air-to-ground gunnery range for hazardous laser training. The FAA recognizes the proposed restricted areas could impact civil flight training, largely conducted by the University of North Dakota and east of the proposed complex. Additionally, nearly all civil flight training activity that currently occurs in the vicinity of the restricted areas would take place below the proposed R–5403 footprint. Whereas the floor of R–5402 goes down to 500 feet above ground level (AGL), its cylinder footprint was reduced to a 7 NM radius around R–5401 and the Camp Grafton Range to mitigate impacts to these civil operations. This airspace action provides a reasonable balance between military training requirements and accommodation of non-participant flight training.

Three commenters stated that the vast size of the restricted area complex is not necessary. The restricted areas being established by this action provide the minimum vertical and lateral tactical maneuvering airspace required for UAS operators to accomplish target acquisition prior to attack, and then contain the non-eye safe laser during firing. The restricted area complex was configured to confine two UAS operating on independent mission profiles at the same time, while minimizing airspace impacts to non-participating aircraft. As the UAS training flight transitions from one phase of the mission profiles to another, unused segments will be deactivated and returned to the NAS consistent with the FAA's Joint Use Airspace policy. The subdivided and stratified configuration of the restricted area complex enables the USAF to only activate the restricted areas needed for their training sorties while leaving the rest of the complex inactive and available for NAS users. The FAA believes the segmentation and stratification of the complex will enhance civil access to those parts of the complex not activated for USAF training requirements. Actual procedures for restricted area activation and deactivation will be defined in a Letter of Procedure between the using and controlling agencies.

Two commenters asked if the USAF could find a less cluttered area with more suitable weather for MQ–1 Predator operations. The FAA acknowledges that weather challenges will exist for the MQ–1 Predator operations at Grand Forks AFB. The decision to base Predator UAS at Grand Forks AFB, however, was mandated by Congress. The restricted areas proposed by this action were situated and proposed in the only location that met the USAF's operational requirements of proximity to launch/recovery base, low air traffic density, and availability of an existing air-to-ground gunnery range suitable for the hazardous non-eye safe laser training activities.

One commenter contended that Alert Areas are more appropriate for UAS training activity. Alert Areas are designated to inform nonparticipating pilots of areas that contain a high volume of pilot training operations, or an unusual type of aeronautical activity, that they might not otherwise expect to encounter. However, only those activities that do not pose a hazard to other aircraft may be conducted in an Alert Area. Since employment of the non-eye safe laser carried by the MQ–1 Predator UAS is an activity hazardous to non-participants, an Alert Area is not an appropriate airspace solution.

Two commenters stated that the Air Force is proposing restricted areas as a means to mitigate for lack of see-and-avoid capability for UAS operations. They noted, correctly, that the Air Force could use ground-based or airborne assets to provide see-and-avoid compliance instead. FAA policy dictates that restricted areas are established to confine activities considered hazardous to non-participating aircraft. As mentioned previously, the focus of this action is establishing restricted areas to support hazardous military training activities, not UAS integration into the NAS. As such, the FAA does not support establishing restricted areas as a solution to overcome UAS inability to comply with 14 CFR Part 91 see-and-avoid requirements. The FAA is establishing the restricted areas addressed in this action to confine the hazardous non-eye safe laser training activities conducted by the USAF.

One commenter stated that new restricted airspace should be offset by reallocation of unused SUA elsewhere in the NAS. The proposed restricted areas fall almost entirely within the existing Devils Lake East MOA. When activated, the new restricted areas will be, in effect, replacing existing SUA. Although the regulatory and non-regulatory process for establishing SUA is not directly linked to the restricted area and MOA annual utilization reporting process, the FAA does review restricted area and MOA utilization annually. If candidate SUA areas are identified, the FAA works with the military service to appropriately return that airspace to the NAS.

Seventeen commenters stated that Predator pilots can get the same training through simulation. The FAA cannot determine for the USAF the value of simulated UAS operator training over actual flying activities. The USAF is heavily investing in Live, Virtual, and Constructive (LVC) training options. As the commenters infer, the migration to a virtual training environment would be expected to reduce the demand for activating R–5402 and R–5403A–F. However, actual employment of the non-eye safe laser will still be required for both training proficiency and equipment validation. This action balances the training airspace requirements identified by the USAF as it matures its UAS capabilities with the airspace access requirements of other NAS users.

Twenty commenters addressed the increased collision hazard due to air traffic compression at lower altitudes and around the periphery of the proposed complex. The FAA recognizes that compression could occur when the restricted areas are active; however, the actual impact will be minimal. The FAA produced traffic counts for the 5 busiest summer days and 5 busiest winter days of 2011 during the proposed times of designation (0700–2200L) from 8,000 feet MSL to 14,000 feet MSL. Totals for all IFR and known VFR aircraft ranged between 4 and 22 aircraft over the 17-hour span. Volumes such as this are easily managed by standard ATC procedures. To enhance non-radar service in the far western part of the proposed complex, the FAA is considering a separate rulemaking action to modify V–170 so that it will remain clear of R–5402 to the west. On average, four aircraft file V–170 over a 24-hour day. Lastly, the FAA is nearing completion of a project to add three terminal radar feeds, from Bismarck, Fargo, and Minot AFB, covering the restricted area airspace area into Minneapolis ARTCC. These feeds will improve low altitude radar surveillance and enhance flight safety around the proposed restricted areas.

One commenter argued that the proposed airspace should be limited to daylight hours only. While daytime flying is usually safer in a visual see-and-avoid environment; when it comes to the military training for combat operations, darkness provides a significant tactical advantage and UAS must be capable of operating both day and night. While the USAF has a valid and recurring requirement to train during hours of darkness, the USAF was able to accept a 2-hour reduction in the published times of designation core hours from ''0700–2200 daily, by NOTAM 6 hours in advance,'' to ''0700–2000 daily, by NOTAM 6 hours in advance.''

Another commenter sought details on the UAS lost link plan. Although the lost link plan is not within the scope of this action, the FAA does require detailed procedures for UAS lost link situations for all UAS operations. These procedures will be similar to those in place today for UAS operations across the NAS. The servicing ATC facility and UAS operators closely coordinate lost link procedures and will incorporate them into the implementing Letters of Procedure (LOP) for the restricted areas established in this rule.

Two commenters commented that the proposed restricted area complex stratification and segmentation was confusing and would lead to SUA airspace incursions. The FAA promotes stratifications and segmentation of large SUA complexes to maximize the safety and efficiency of the NAS and to enable more joint use opportunities to access the same airspace by non-participating aircraft. Sub-dividing the complex permits activation of a small percentage of the overall complex at any one time while still providing for a diverse set of training profiles during UAS sorties, which is especially well-suited for long duration UAS training missions. Additionally, enhanced joint use access eases compression of air traffic in the local area; thus, increasing flight safety.

Nineteen commenters noted that UAS will not be able to see-and-avoid large flocks of birds using migratory flyways, which could create a hazard for personnel on the ground. Both Grand Forks AFB and the University of North Dakota flight school, located at the Grand Forks International Airport, have conducted extensive research into bird strike potential and prevention. Their research found that more than 90 percent of bird strikes occur below 3,500 feet AGL and that there are predictable windows for migratory bird activity, which are adjusted year-to-year based on historical and forecast weather patterns. Also, bird strikes are nearly twice as likely to occur at night compared to the day. The USAF has long standing bird strike avoidance procedures specifically customized for Grand Forks AFB, which will be optimized for UAS operations. Other mitigations include having the bases of the restricted airspace well above most bird activity, conducting most training during daylight hours, and adjusting UAS operations during seasonal migratory activity. These mitigations conform to both civil and military standard bird strike avoidance measures that are in place across the NAS.

Eighteen commenters contended that persons and property under the proposed airspace would not be protected from the non-eye safe laser training. The USAF conducted a laser safety study in 2009 for the Camp Grafton Air-to-Ground Range. This range, where the laser targets will be placed, lies within the existing R–5401. The study examined laser and aircraft characteristics, topography, target composition, and employment parameters, and determined that the proposed airspace would adequately protect persons and property outside the footprint of R–5401. Personnel working at the range will use proper protective gear should they need to access the target areas during laser employment periods. The FAA has reviewed and accepts the USAF's laser safety study. The restricted areas established by this action are designed to allow laser employment without hazard to persons and property in the vicinity of R–5401.

Two commenters stated that it is dangerous to mix UAS with visual flight rules (VFR) air traffic. UAS are permitted to fly outside restricted area airspace in the NAS today and in the vicinity of VFR aircraft, under FAA approved Certificate of Waiver or Authorization (COA). Specific to this action, UAS operations will be occurring inside restricted area airspace that is established to confine the hazardous non-eye safe laser training activities; thus, segregated from nonparticipating aircraft.

One commenter said that VFR pilot violations will increase and those less informed will pose a safety hazard. The FAA interpreted the commenters use ''violations'' to mean SUA airspace incursions. VFR pilots must conduct thorough pre-flight planning and are encouraged to seek airborne updates from ATC on the status of SUA. The FAA finds that the restricted areas established by this action pose no more risk of incursion or safety hazard than other restricted areas that exist in the NAS.

Two commenters observed that the NPRM failed to identify how UAS would transit from Grand Forks AFB to the proposed restricted areas. The FAA considers UAS transit and climb activities to be non-hazardous; therefore, establishing new restricted areas for transit and climb purposes is inappropriate. While UAS transit and climb activities are non-hazardous, they are presently atypical. Therefore, specifics on transit and climb ground tracks, corridor altitudes and widths, and activation procedures will be accomplished procedurally and consistent with existing COA mitigation alternatives available today. The establishment of restricted areas airspace is focused on the hazardous non-eye safe laser training activities.

Twenty four commenters noted that the proposed restricted areas would block V–170 & V–55 and impact V–169 & V–561. The FAA acknowledges that the proposed restricted area complex will have a minimal impact on three of the four Victor airways mentioned, depending on the restricted areas activated. The airway analysis began with V–170, which runs between Devils Lake, ND, and Jamestown, ND, with a Minimum En route Altitude (MEA) of 3,500 feet MSL along the effected segment of the airway. An average of four aircraft per day filed for V–170. R–5402, when active, impacts V–170 from 1200 feet AGL to 10,000 feet MSL. The FAA is considering a separate rulemaking action to modify V–170 by creating a slight ''dogleg'' to the west, which would allow unimpeded use of V–170 below 8,000 feet MSL regardless of the status of R–5402. Impacts to V–170 above 8,000 feet MSL are dependent upon which restricted areas are active.

V–55 runs between Grand Forks, ND, and Bismarck, ND, with an MEA of 8,000 feet MSL along the affected segment of the airway. An average of 7 aircraft per day filed for V–55. Activation of R–5402, R–5403A, R–5403B, or R–5403C would have no impact on V–55. The FAA raised the floor of R–5403D to 10,000 feet MSL and reduced the blocks for R–5403D and R–5403E to 2,000 feet each to allow ATC more flexibility to climb/descend IFR traffic on V–55. The FAA is also considering establishing a Global Positioning Satellite MEA along the affected segment of V–55 to allow properly equipped non-participating aircraft to fly the V–55 ground track, but at a lower altitude.

V–561 runs between Grand Forks, ND, and Jamestown, ND, with an MEA of 4,000 feet MSL along this segment of the airway. An average of two aircraft per day filed for V–561. When activated, the southeast corner of R–5403D, R–5403E, and R–5403F encroach upon V–561 from 10,000 feet MSL–11,999 feet MSL, 12,000 feet MSL–13,999 feet MSL, or 14,000 feet MSL–17,999 feet MSL, respectively.

V–169 runs between Devils Lake, ND, and Bismarck, ND, with an MEA of 3,500 feet MSL along this segment. The nearest point of any restricted area is 5 nautical miles (NM) from the centerline of V–169. Since Victor airways are 4 NM wide; the restricted areas do not encumber the use of V–169.

The FAA acknowledges potential impacts to users on Victor airways V–55, V–170, and V–651 by the restricted areas established in this action.

However, based on the 13 total average daily flights filing for V–55, V–170, and V–651 in the same airspace as the proposed restricted area complex (V–169 is not affected by the proposed airspace), the impacts of the restricted areas on the three affected airways is considered minimal. These aircraft have air traffic control procedural alternatives available to include vectoring, altitude change, or re-routing as appropriate.

Nineteen commenters found that transcontinental and local area flights would be forced to deviate around restricted areas, increasing cost and flight time. The FAA understands that when the restricted areas are active, non-participation aircraft will have to accomplish course deviations or altitude changes for avoidance, which can increase distances flown and costs incurred. For this action, the FAA and USAF worked together to define the minimum airspace volume necessary to meet USAF training mission requirements and maximize airspace access to other users of the NAS. Reducing the overall size and internally segmenting and stratifying the complex have reduced course deviation distances and altitude changes required by non-participants to avoid active restricted areas. Additionally, the USAF as agreed to temporarily release active restricted airspace back to ZMP for non-participant transit during non-routine/contingency events (i.e. due to weather, icing, aircraft malfunction, etc.). Air traffic in this part of the NAS is relatively light and the level of impact associated with establishing the restricted areas in this action is considered minimal when balanced against valid military training requirements.

Twenty-four comments were received stating that four hours prior notice is insufficient lead time for activation by NOTAM, with most recommending that the prior notification time be increased to six hours. The FAA recognizes that many aircraft today have flight durations long enough that flight planning before takeoff may occur outside of the 4-hour window. Restricted areas provide protected airspace for hazardous operations with no option to transit when active, so changes in airspace status after flight planning would have an impact on routing or altitude. These impacts could be reduced by increasing the NOTAM notification time; therefore the proposed time of designation for R–5402 and R–5403A–F is amended to ''0700–2000 daily, by NOTAM 6 hours in advance; other times by NOTAM.''

One commenter stated that the SUA should be limited to published times of designation or times that can be obtained through an Automated Flight Service Station (AFSS) or ZMP. The times of designation for the restricted areas conforms to FAA policy and provides military users the operational flexibility to adjust for unpredictable, yet expected events, such as poor weather conditions or aircraft maintenance delays. By establishing the restricted areas with a ''By NOTAM'' provision for activations, the AFSS will receive scheduled activation times at least 6 hours in advance and can provide activation information when requested. Additionally, ZMP can provide the most current restricted areas status to airborne aircraft, workload permitting, as an additional service to any requesting IFR or VFR aircraft.

Nineteen commenters contended that local and transient pilots would avoid the restricted areas regardless of the activation status. The FAA understands that some pilots may opt to avoid the vicinity of this proposed airspace complex; however, pilots have multiple ways to obtain SUA schedule information during preflight planning and while airborne to aid their situational awareness. Daily SUA schedules will be available on the *sua.faa.gov* Web site, NOTAMs will be issued at least 6 hours prior to activating the restricted areas, and AFSS will brief SUA NOTAMS upon request. Airborne updates will also be available through ZMP or AFSS. Lastly, the USAF will provide a toll-free phone number for inclusion on aeronautical charts that will enable NAS users to contact the scheduling agency for SUA status information; similar to what is in place for the Adirondack SUA complex in New York.

Two commenters requested that the FAA chart an ATC frequency for updates on the restricted areas. The FAA has frequencies listed on both the L–14 IFR Enroute Low Altitude Chart and the Twin Cities Sectional Aeronautical Chart already. Upon review, the VHF frequency listed on the IFR Enroute Low Altitude Chart near where R–5402 and R–5403A–F restricted areas will be established was found to be different than the frequency listed on the Sectional Aeronautical Chart listing of SUA for the existing R–5401 (which R–5402 and R–5403A–F will overlay). The FAA is taking action to correct the discrepancy so that matching frequencies are charted.

Seventeen commenters stated that the NOTAM system is generally inadequate to inform users of SUA status, and the number of components to this restricted airspace would lead to intricate and confusing NOTAMs. The restricted area complex is comprised of 7 individual areas and structured to minimize complexity and maximize nonparticipant access when not required for military use during certain phases of a training mission. The overall complex configuration, with seven sub areas, is a reasonable balance between efficiency, complexity, and military requirements. The NOTAM system is designed to disseminate many types of aeronautical information, including restricted area status when activation is ''By NOTAM'' or outside published times of designation. Because of the ''By NOTAM'' provision in the legal description times of designation, activation NOTAMs for R–5402 and R–5403A–F will be included in verbal briefings from AFSS, upon pilot request.

The Rule

The FAA is amending 14 CFR part 73 to expand the vertical and lateral limits of restricted area airspace over the Camp Grafton Range to contain hazardous non-eye safe laser training operations being conducted by the emerging UAS mission at Grand Forks Air Force Base (AFB); thus, transforming the range into a viable non-eye safe laser training location. Camp Grafton Range is currently surrounded by R–5401; however, the lateral boundaries and altitude are insufficient to contain the laser training mission profiles and tactics flown in combat operations today. This action supplements R–5401 by establishing additional restricted areas, R–5402, R–5403A, R–5403B, R–5403C, R–5403D, R–5403E, and R–5403F, to provide the vertical and lateral tactical maneuver airspace needed for UAS target acquisition prior to attack, and to contain the non-eye safe laser during laser target designation training operations from medium to high altitudes.

The restricted area R–5402 is defined by a 7 nautical mile (NM) radius around the center of R–5401, with the northern boundary adjusted to lie along the 47°45′00″ N latitude. The restricted area altitude is upward from 500 feet above ground level to, but not including 10,000 feet MSL. This new restricted area provides a pathway for the non-eye safe laser beam to transit from R–5403A, R–5403B, and R–5403C (described below) through the existing R–5401 and onto Camp Grafton Range.

The restricted areas R–5403A, R–5403B, and R–5403C share the same lateral boundaries, overlying R–5402 and layered in ascending order. The northern boundary of these R–5403 areas, as described in the regulatory text, share the same northern boundary as R–5402, the 47°45′00″ N latitude. The

western boundary lies approximately 14 NM west of R–5402 along the 99°15′00″ W longitude and the eastern boundary lies approximately 7 NM east of R–5402 along the 98°15′00″ W longitude. Finally, the southern boundary is established to remain north of the protected airspace for V–55. The restricted area altitudes, in ascending order, are defined upward from 8,000 feet MSL to, but not including 10,000 feet MSL for R–5403A; upward from 10,000 feet MSL to, but not including 14,000 feet MSL for R–5403B; and upward from 14,000 feet MSL to, but not including Flight Level (FL) 180 for R–5403C. The additional lateral and vertical dimensions provided by these restricted areas, in conjunction with R–5401, R–5402, R–5403D, R–5403E, R–5403F, establish the maneuvering airspace needed for UAS aircraft to practice the tactical maneuvering and standoff target acquisition training requirements necessary for the combat tactics and mission profiles flown today and to contain the hazardous non-eye safe laser, when employed, completely within restricted airspace.

The areas R–5403D, R–5403E, and R–5403F also share the same lateral boundaries, adjacent to and southeast of R–5403A, R–5403B, and R–5403C, and are also layered in ascending order. The northern boundary of these R–5403 areas, as described in the regulatory text, shares the southern boundary of R–5403A, R–5403B, and R–5403C. The western boundary point reaches to the 99°15′00″ W longitude and the eastern boundary lies along the 98°15′00″ W longitude. Finally, the southern boundary is established to lie along the 47°15′00″ N latitude. The restricted area altitudes, in ascending order, are defined upward from 10,000 feet MSL to, but not including 12,000 feet MSL for R–5403D; upward from 12,000 feet MSL to, but not including 14,000 feet MSL for R–5403E; and upward from 14,000 feet MSL to, but not including Flight Level (FL) 180 for R–5403F. The additional lateral and vertical dimensions provided by these restricted areas, in conjunction with R–5401, R–5402, R–5403A, R–5403B, R–5403C, and the Camp Grafton Range, establish the maneuvering airspace, standoff target acquisition, and hazardous non-eye safe laser employment training completely within restricted airspace, as noted above.

During the NPRM public comment period, it was realized that the proposal section of the NPRM preamble described the southern boundary for the proposed R–5403D, R–5403E, and R–5403F to lay along the 47°30′00″ N latitude, in error. However, the regulatory text in the NPRM correctly described the southern boundary for these proposed restricted areas to lie along the 47°15′00″ N latitude. This action confirms the southern boundary for R–5403D, R–5403E, and R–5403F is along the 47°15′00″ N latitude.

Restricted areas R–5402, R–5403A, R–5403B, R–5403C, R–5403D, R–5403E, and R–5403F are all designated as ''joint-use'' airspace. This means that, during periods when any of the restricted airspace areas are not needed by the using agency for its designated purposes, the airspace will be returned to the controlling agency for access by other NAS users. The Minneapolis Air Route Traffic Control Center is the controlling agency for the restricted areas.

Lastly, to prevent confusion and conflict by establishing the new restricted areas in an existing MOA, and having both SUA areas active in the same volume of airspace at the same time, the Devils Lake East MOA legal description is being amended in the NFDD. The Devils Lake East MOA amendment will exclude R–5401, R–5402, R–5403A, R–5403B, R–5403C, R–5403D, R–5403E, and R–5403F when the restricted areas are active. The intent is to exclude the restricted areas in Devils Lake East MOA individually as they are activated. This MOA amendment will prevent airspace conflict with overlapping special use airspace areas.

Regulatory Notices and Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows:

As presented in the discussion of comments section of this preamble, commenters stated that there could be the following potential adverse economic impacts from implementing this final rule: the rule will block V–170 and V–55 and limit the use of V–169 and V–561; VFR and local area flights will be forced to deviate around restricted areas, increasing cost and flight time; and the 500 feet AGL floor for R–5402 will affect low level aerial operations such as crop dusters, wildlife and agricultural surveys, and emergency medical access.

With respect to the first potential impact, as discussed in the preamble, the FAA acknowledges that users of Victor airways V–55, V–170, and V–561 could be potentially affected when the restricted areas established in this action are active; however users of V–169 will not be affected at all. Users of V–170 from 1200 feet AGL to 8,000 feet MSL would be affected only when R–5402 is active. The FAA's has determined that there is an average of 4 flights per day between Devils Lake, ND, and Jamestown, ND. Of these flights, 90 percent are general aviation flights (many of them University of North Dakota training flights) and 10 percent are military or air taxi flights. The potential effect on users of V–170 could be offset by several actions. One action would be to modify V–170 by creating a slight ''dogleg'' further west of R–5402 to allow unimpeded use of V–170 below 8,000 feet MSL regardless of the status of R–5402. The FAA estimates that this ''dogleg'' would add about 5 miles to the length of the flight between Devils Lake and Jamestown. Another action would be for air traffic control to either vector the aircraft west of R–5402 or climb the aircraft to 8,000 feet MSL to avoid R–5402. V–170 above 8,000 feet MSL, V–55, and V–561 can still be used by the public, even during military training

operations, if the nonparticipant aircraft flies at a different altitude than the altitudes the military is using at that time. The FAA has determined that these adjustments will result in minimal cost to the affected operators.

With respect to the second potential impact, with the exception of R–5402, the public will not be required to deviate around the restricted areas, even during military operations, as long as the nonparticipating aircraft flies at an altitude above or below the altitudes that the military is using at that time. The FAA has determined that these altitude adjustments will have a minimal effect on cost.

With respect to the third potential impact, the USAF has agreed to implement scheduling coordination measures for R–5402 that will accommodate access by local farming, ranching, survey, and medical aviation interests. Further, when any of the restricted areas are not needed by the USAF for its intended purposes, the airspace will be returned to the controlling agency, Minneapolis Air Route Traffic Control Center, for access by other NAS users; providing considerable time for these interests to perform most of their aviation activities in a timely manner. The FAA has determined that these potential disruptions in public aviation will have a minimal effect on cost.

The FAA has, therefore, determined that this final rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA received two comments from small business owners and a comment from the North Dakota Agricultural Aviation Association (NDAAA), representing agricultural aviation operators. The comments from the business owners expressed concerns about the availability of airspace and that they would be diverted from their normal flight plans, thereby increasing their costs. As previously stated in this preamble, however, these routes will not be closed even during military operations—they can be flown by nonparticipant aircraft so long as those aircraft are not at the altitudes being used by the military. The NDAAA comment that agricultural aircraft are frequently ferried at altitudes greater than 500 feet applies only to those aircraft in R–5402—not in any of the other areas. As previously noted, the agreement with the USAF and the fact that there are no restrictions in R–5402 when it is not being used by the military will minimize the potential economic impact to agricultural aviation operations in this airspace.

While the FAA believes that one air taxi operator, a few small business operators, and a few agricultural aviation operators constitute a substantial number of small entities, based on the previous analysis, the FAA determined that the final rule will have a minimal economic impact.

Therefore, as the acting FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it will have only a domestic impact and therefore no effect on international trade.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $143.1 million in lieu of $100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

Environmental Review

Pursuant to Section 102(2) of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR parts 1500–1508), and other applicable law, the USAF prepared and published *The BRAC Beddown and Flight Operations of Remotely Piloted Aircraft at Grand Forks Air Force Base, North Dakota''* dated July 2010 (hereinafter the FEIS) that analyzed the potential for environmental impacts associated with the proposed creation of Restricted Areas R–5402, R–5403A, R–5403B, R–5403C, R–5403D, R–5403E, and R–5403F. In September 2010, the USAF issued a Record of Decision based on the results of the FEIS. In accordance with applicable CEQ regulations (40 CFR 1501.6) and the Memorandum of Understanding (MOU) between FAA and Department of Defense (DOD) dated October 2005, the FAA was a cooperating agency on the FEIS. The FAA has conducted an independent review of the FEIS and found that it is an adequate statement. Pursuant to 40 CFR 1506.3(a) and (c), the FAA is adopting the portions of the FEIS for this action that support the establishment of the above named restricted areas. The FAA has documented its partial adoption in a separate document entitled *''Partial Adoption of Final EIS and Record of*

Decision for the Establishment of Restricted Areas R–5402 and 5403.'' This final rule, which establishes restricted areas R–5402, R–5403A, R–5403B, R–5403C, R–5403D, R–5403E, and R–5403F, will not result in significant environmental impacts. A copy of the FAA Partial Adoption of FEIS and ROD has been placed in the public docket for this rulemaking and is incorporated by reference.

FAA Authority

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes restricted area airspace at Camp Grafton Range, near Devils Lake, ND, to enhance safety and accommodate essential military training.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.54 [Amended]

■ 2. Section 73.54 is amended as follows:

* * * * *

R–5402 Devils Lake, ND [New]

Boundaries. Beginning at lat. 47°45′00″ N., long. 98°47′19″ W.; to lat. 47°45′00″ N., long. 98°31′25″ W.; then clockwise on a 7 NM arc centered on lat. 47°40′31″ N., long. 98°39′22″ W.; to the point of beginning, excluding the airspace within R–5401 when active, and R–5403A when active.

Designated altitudes. 500 feet AGL to, but not including, 10,000 feet MSL.

Time of designation. 0700–2000 daily, by NOTAM 6 hours in advance; other times by NOTAM.

Controlling agency. FAA, Minneapolis ARTCC.

Using agency. U.S. Air Force, 119th Operations Support Squadron, Hector International Airport, Fargo, ND.

* * * * *

R–5403A Devils Lake, ND [New]

Boundaries. Beginning at lat. 47°45′00″ N., long. 99°15′00″ W.; to lat. 47°45′00″ N., long. 98°15′00″ W.; to lat. 47°35′39″ N., long. 98°15′00″ W.; to lat. 47°15′00″ N., long. 99°15′00″ W.; to the point of beginning.

Designated altitudes. 8,000 feet MSL to, but not including, 10,000 feet MSL.

Time of designation. 0700–2000 daily, by NOTAM 6 hours in advance; other times by NOTAM.

Controlling agency. FAA, Minneapolis ARTCC.

Using agency. U.S. Air Force, 119th Operations Support Squadron, Hector International Airport, Fargo, ND.

R–5403B Devils Lake, ND [New]

Boundaries. Beginning at lat. 47°45′00″ N., long. 99°15′00″ W.; to lat. 47°45′00″ N., long. 98°15′00″ W.; to lat. 47°35′39″ N., long. 98°15′00″ W.; to lat. 47°15′00″ N., long. 99°15′00″ W.; to the point of beginning.

Designated altitudes. 10,000 feet MSL to, but not including, 14,000 feet MSL.

Time of designation. 0700–2000 daily, by NOTAM 6 hours in advance; other times by NOTAM.

Controlling agency. FAA, Minneapolis ARTCC.

Using agency. U.S. Air Force, 119th Operations Support Squadron, Hector International Airport, Fargo, ND.

R–5403C Devils Lake, ND [New]

Boundaries. Beginning at lat. 47°45′00″ N., long. 99°15′00″ W.; to lat. 47°45′00″ N., long. 98°15′00″ W.; to lat. 47°35′39″ N., long. 98°15′00″ W.; to lat. 47°15′00″ N., long. 99°15′00″ W.; to the point of beginning.

Designated altitudes. 14,000 feet MSL to, but not including, FL 180.

Time of designation. 0700–2000 daily, by NOTAM 6 hours in advance; other times by NOTAM.

Controlling agency. FAA, Minneapolis ARTCC.

Using agency. U.S. Air Force, 119th Operations Support Squadron, Hector International Airport, Fargo, ND.

R–5403D Devils Lake, ND [New]

Boundaries. Beginning at lat. 47°35′39″ N., long. 98°15′00″ W.; to lat. 47°15′00″ N., long. 98°15′00″ W.; to lat. 47°15′00″ N., long. 99°15′00″ W.; to the point of beginning.

Designated altitudes. 10,000 feet MSL to, but not including, 12,000 feet MSL.

Time of designation. 0700–2000 daily, by NOTAM 6 hours in advance; other times by NOTAM.

Controlling agency. FAA, Minneapolis ARTCC.

Using agency. U.S. Air Force, 119th Operations Support Squadron, Hector International Airport, Fargo, ND.

R–5403E Devils Lake, ND [New]

Boundaries. Beginning at lat. 47°35′39″ N., long. 98°15′00″ W.; to lat. 47°15′00″ N., long. 99°15′00″ W.; to the point of beginning.

Designated altitudes. 12,000 feet MSL to, but not including, 14,000 feet MSL.

Time of designation. 0700–2000 daily, by NOTAM 6 hours in advance; other times by NOTAM.

Controlling agency. FAA, Minneapolis ARTCC.

Using agency. U.S. Air Force, 119th Operations Support Squadron, Hector International Airport, Fargo, ND.

R–5403F Devils Lake, ND [New]

Boundaries. Beginning at lat. 47°35′39″ N., long. 98°15′00″ W.; to lat. 47°15′00″ N., long. 98°15′00″ W.; to lat. 47°15′00″ N., long. 99°15′00″ W.; to the point of beginning.

Designated altitudes. 14,000 feet MSL to, but not including, FL 180.

Time of designation. 0700–2000 daily, by NOTAM 6 hours in advance; other times by NOTAM.

Controlling agency. FAA, Minneapolis ARTCC.

Using agency. U.S. Air Force, 119th Operations Support Squadron, Hector International Airport, Fargo, ND.

Issued in Washington, DC, on June 14, 2012.

Paul Gallant,

Acting Manager, Airspace, Regulations and ATC Procedures Group.

[FR Doc. 2012–15008 Filed 6–19–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9594]

RIN 1545–BI31

Modification to Consolidated Return Regulation Permitting an Election To Treat a Liquidation of a Target, Followed by a Recontribution to a New Target, as a Cross-Chain Reorganization

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations under section 1502 of the Internal Revenue Code (Code). These final regulations modify the election under which a consolidated group can avoid immediately taking into account an intercompany item after the liquidation of a target corporation. These regulations apply to corporations filing consolidated income tax returns.

DATES: *Effective Date:* These regulations are effective on June 20, 2012.

Applicability Date: The changes reflected in these final regulations

(§ 1.1502–13(f)(5)(ii)(B)(*1*) and (*2*)) generally apply to transactions in which T's liquidation into B occurs on or after October 25, 2007. For transactions in which T's liquidation into B occurs before October 25, 2007, § 1.1502–13(f)(5)(ii)(B)(*1*) and (*2*) in effect prior to October 25, 2007 as contained in 26 CFR part 1, revised April 1, 2009, continue to apply.

FOR FURTHER INFORMATION CONTACT: Michael R. Gould, (202) 622–7550 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1433. The collection of information in these final regulations is required in order for the parent of a consolidated group to make the election found in § 1.1502–13(f)(5)(ii)(B).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background and Explanation of Provisions

This document contains amendments to 26 CFR part 1. On September 4, 2009, the IRS and Treasury Department published temporary (TD 9458, 2009–43 IRB 547) and proposed (REG–139068–08, 2009–43 IRB 558) regulations in the **Federal Register** (74 FR 45757 and 74 FR 45789, respectively). The regulations modify the election under which a consolidated group can avoid immediately taking into account an intercompany item after the liquidation of a target corporation. On March 4, 2011, the IRS and Treasury Department published final regulations in the **Federal Register** (TD 9515, 76 FR 11956), which republished the 2009 temporary regulations without substantive change, to make a minor correction to the ordering of the regulations as they appeared in the **Federal Register**. The IRS and the Treasury Department received no comments responding to the proposed and temporary regulations. No public hearing was requested or held. Therefore, this document adopts the provisions of the proposed regulations with no substantive change and the corresponding temporary regulations are removed. See § 601.601(d)(2).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866 as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that this regulation primarily affects members of consolidated groups which tend to be large corporations. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business. No comments were received.

Drafting Information

The principal authors of these final regulations are Mary W. Lyons, formerly of the Office of Associate Chief Counsel (Corporate), and Michael R. Gould of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by removing the entry for § 1.1502–13T to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1502–13 also issued under 26 U.S.C. 1502. * * *

■ **Par. 2.** Section 1.1502–13 is amended by revising paragraphs (f)(5)(ii)(B)(*1*) and (*2*) and adding new paragraph (f)(5)(ii)(F) to read as follows:

§ 1.1502–13 Intercompany transactions.

* * * * *

(f) * * *

(5) * * *

(ii) * * *

(B) *Section 332*—(*1*) *In general.* If section 332 would otherwise apply to T's (old T's) liquidation into B, and B transfers substantially all of old T's assets to a new member (new T), and if a direct transfer of substantially all of old T's assets to new T would qualify as a reorganization described in section 368(a), then, for all Federal income tax purposes, T's liquidation into B and B's transfer of substantially all of old T's assets to new T will be disregarded and instead, the transaction will be treated as if old T transferred substantially all of its assets to new T in exchange for new T stock and the assumption of T's liabilities in a reorganization described in section 368(a). (Under paragraph (j)(1) of this section, B's stock in new T would be a successor asset to B's stock in old T, and S's gain would be taken into account based on the new T stock.)

(*2*) *Time limitation and adjustments.* The transfer of old T's assets to new T qualifies under paragraph (f)(5)(ii)(B)(*1*) of this section only if B has entered into a written plan, on or before the due date of the group's consolidated income tax return (including extensions) for the tax year that includes the date of old T's liquidation, to transfer the old T assets to new T, and the statement described in paragraph (f)(5)(ii)(E) of this section is included on or with a timely filed consolidated income tax return (including extensions) for the tax year that includes the date of the liquidation. However, in the case of a liquidation of old T on or after October 25, 2007, by a taxpayer whose original tax return for the year of liquidation was filed on or before November 3, 2009, see § 1.1502–13T(f)(5)(ii)(F)(*3*) as contained in 26 CFR part 1, revised April 1, 2012. In either case, the transfer of substantially all of T's assets to new T must be completed within 12 months of the filing of the return. Appropriate adjustments are made to reflect any events occurring before the formation of new T and to reflect any assets not transferred to new T, or liabilities not assumed by new T. For example, if B retains an asset of old T, the asset is treated under paragraph (f)(3) of this section as acquired by new T but

distributed to B immediately after the reorganization.

* * * * *

(F) *Effective/applicability date*—(*1*) *General rule.* Paragraphs (f)(5)(ii)(B)(*1*) and (*2*) of this section apply to transactions in which old T's liquidation into B occurs on or after October 25, 2007.

(*2*) *Prior periods.* For transactions in which old T's liquidation into B occurs before October 25, 2007, see paragraphs (f)(5)(ii)(B)(*1*) and (*2*) of this section in effect prior to October 25, 2007, as contained in 26 CFR part 1, revised April 1, 2009.

* * * * *

§ 1.1502–13T [Removed]

■ **Par. 3.** Section § 1.1502–13T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 4.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 5.** In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.1502–13	1545–1433
* * * * *	

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: June 11, 2012.

Emily S. McMahon,

(Acting) Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2012–14979 Filed 6–19–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 241

[Docket ID: DOD–2010–OS–0141]

RIN 0790–AI66

Pilot Program for the Temporary Exchange of Information Technology Personnel

AGENCY: Department of Defense (DoD), Office of the DoD Chief Information Officer (DoD CIO).

ACTION: Final rule.

SUMMARY: This part assigns responsibilities and provides procedures for implementing a Pilot Program for the Temporary Exchange of Information Technology Personnel, known as the Information Technology Exchange Program pilot. Pilot is envisioned to promote the interchange of DoD and private sector IT professionals to enhance skills and competencies. Given the changing workforce dynamics in the IT field, DoD needs to take advantage of these types of professional development programs to proactively position itself to keep pace with the changes in technology. The ITEP pilot will serve the public good by enhancing the DoD IT workforce skills to protect and defend our nation.

DATES: *Effective Date:* This rule is effective July 20, 2012.

FOR FURTHER INFORMATION CONTACT: Joyce France at (571) 372–4652 or *joyce.france@osd.mil.*

SUPPLEMENTARY INFORMATION:

Executive Summary

I. Purpose of this Regulatory Action

a. The ITEP Pilot is envisioned to promote the interchange of DoD and private sector IT professionals to enhance skills and competencies. Given the changing workforce dynamics in the IT field, DoD needs to take advantage of these types of professional development programs to proactively position itself to keep pace with the changes in technology.

To date, one private sector candidate has been successfully placed and completed a 6 month ITEP assignment with the DoD Office of the Under Secretary of Defense (Comptroller). Two additional private sector candidates have been identified for ITEP assignments and the details of these assignments are currently being worked with the respective sponsoring organizations. We anticipate that both candidates will onboard to DoD in the third quarter of Fiscal Year 2012. The Department has posted nine ITEP detail opportunity announcements for private sector candidates to the DoD ITEP Web site related to service oriented architecture, cybersecurity, IT project management, IT infrastructure/consolidation, social media, and mobility and wireless. An announcement has also been posted on the ITEP Web site for a DoD employee to participate in a detail in networking with a small, veteran-owned private sector company.

b. This regulation implements section 1110 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84), which authorizes DoD to implement a Pilot Program for the Temporary Exchange of Information Technology (IT) Personnel. This statute authorizes the temporary assignment of DoD IT employees to private sector organizations. This statute also gives DoD the authority to accept private sector IT employees assigned under the Pilot.

II. Summary of the Major Provisions of This Regulatory Action

This Pilot Program (''Pilot'') is authorized by section 1110 of the NDAA for FY2010 (Pub. L. 111–84). Section 1110 authorizes DoD Components to assign exceptional IT employees to a private sector organization for purposes of training, development and sharing of best practices. It also gives DoD Components the authority to accept comparable IT employees on an assignment from the private sector for the training and development purposes and sharing of best practices and insight of government practices.

III. Costs and Benefits of This Regulatory Action

The cost of employee's salary and benefits will be paid by the originating employer. It is anticipated that the benefit will outweigh the cost to manage this program and any additional cost would be related to travel or cost to attend training or conferences.

Public Comment

The DoD ITEP interim final rule, Title 32 of the Code of Federal Regulations (CFR) Part 241 was published in the **Federal Register**, Vol. 75, No. 239 pages 77753–77756 on December 14, 2010 for public comment. The comment period ended on February 14, 2011. DoD received no comments.

However, the Department did make minor changes to the final rule that were not included in the interim rule. These changes were based upon clarifying

terms, responsibilities and procedures pertaining to the implementation of the ITEP pilot.

The minor changes that were made to the final rule can be found in the following sections:

241.1 Purpose. (b) The first and second sentence was clarified to read ''DoD Component authorized approving official'' from the interim rule title ''Heads of DoD Components.''

241.2 Definitions. The first definition title was updated to read ''Detail'' from the interim rule title ''assignment''. This is changed throughout the document. The fourth definition title was updated to read ''Information technology (IT)'' from the interim rule title ''Information technology management''.

241.6 Length of details. The title of this section was updated from the interim rule title ''Length of assignments''.

Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

It has been certified that 32 CFR part 241 does not:

(1) Have an annual effect on the economy of $100 million or more, or may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive Orders.

Sec. 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been certified that 32 CFR part 241 does not contain a Federal mandate that may result in expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that 32 CFR part 241 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 241 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. While detailed to DoD, a private sector ITEP candidate is deemed to be an employee of the DoD for certain purposes and is bound by applicable federal and DoD regulations regarding personal conduct, security requirements and ethical behavior.

Executive Order 13132, ''Federalism''

It has been certified that 32 CFR part 241 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 241

Government employees, information technology.

Accordingly, 32 CFR part 241 is revised to read as follows:

PART 241—PILOT PROGRAM FOR TEMPORARY EXHANGE OF INFORMATION TECHNOLOGY PERSONNEL

Sec.

Authority: Public Law 111–84, section 1110, October 28, 2009.

§ 241.1 Purpose.

(a) The purpose of this part is to implement section 1110 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84), which authorizes DoD to implement a Pilot Program for the Temporary Exchange of Information Technology (IT) Personnel. This statute authorizes the temporary assignment of DoD IT employees to private sector organizations. This statute also gives DoD the authority to accept private sector IT employees assigned under the Pilot. This program is referred to as the Information Technology Exchange Program (ITEP) pilot.

(b) DoD Component authorized approving official may approve assignments as a mechanism for improving the DoD workforce's competency in using IT to deliver government information and services. DoD Component authorized approving official may not make assignments under this part to circumvent personnel ceilings, or as a substitute for other more appropriate personnel decisions or actions. Approved assignments must meet the strategic program goals of the DoD Components. The benefits to the DoD Components and the private sector organizations are the primary considerations in initiating assignments; not the desires or personal needs of an individual employee.

§ 241.2 Definitions.

In this part:

Detail means the assignment of a DoD employee to a private sector organization without a change of position; or the assignment of a private sector employee to a DoD Component without a change of position.

DoD employee means a Federal civilian employee of the DoD.

Exceptional employee means performance meets or exceeds all standards established at the fully successful level or above and makes significant contributions towards achieving the organizational goals. Participating organizations should target highly motivated, disciplined employees.

Information technology (IT) as defined means use of computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources. IT includes the planning, organizing, staffing, directing, integrating, or controlling of information technology, including occupational specialty areas such as systems administration, IT project management, network services, operating systems, software application, cyber security, enterprise architecture, policy and planning, internet/web services, customer support, data management and systems analysis.

Private sector organization means nonpublic or commercial individuals and businesses, nonprofit organizations, academia, scholastic institutions, and nongovernmental organizations.

Small business concern means a business concern that satisfies the definitions and standards by the

Administrator of the Small Business Administration (SBA) as defined by 5 U.S.C. 3703(e)(2)(A).

§ 241.3 Assignment authority.

The Secretary of Defense may with the agreement, of the private sector organization concerned, arrange for the temporary assignment of a DoD employee to a private sector organization or accept a private sector employee from a private sector organization to a DoD Component.

§ 241.4 Eligibility.

(a) To be eligible for an ITEP detail, a DoD or private sector employee must:

(1) Work in the field of IT;

(2) Be equivalent at the GS–11 level or above

(3) Be considered an exceptional employee, meet or exceed successful performance levels and makes significant contributions towards achieving organizational goals;

(4) Be expected to assume increased IT responsibilities in the future;

(5) Be currently employed by an organization interested in participating in the ITEP pilot; and

(6) Obtain supervisor and company approval before an employee can participate in an ITEP detail.

(b) In addition to meeting the requirements of paragraph (a) of this section, the DoD employee must be serving under a career or career-conditional appointment or an appointment of equivalent tenure in the excepted service.

(c) The private sector employee must meet citizenship requirements for Federal employment in accordance with 5 CFR 7.3 and 338.101, as well as any other statutory requirements. When a position requires a security clearance, the person must possess, or be able to obtain an appropriate security clearance.

(d) Proposed assignment meets applicable requirements of section 209(b) of the E-Government Act of 2002.

§ 241.5 Written agreements.

(a) Before a detail begins, the DoD Component authorized approving official, private sector organization authorized approving official and the employee to be assigned to the ITEP detail must sign a three-party agreement. Prior to the agreement being signed the relevant legal office for the DoD Component shall review and approve the agreement. The agreement must include, but is not limited to the following elements:

(1) The duties to be performed and length of detail;

(2) Describe the core IT competencies and technical skills that the detailee will be expected to enhance or acquire;

(3) Identification of the supervisor of detailee.

(b) The agreement shall require DoD employees, upon completion of the assignment serve in the civil service for a period equal to the length of the detail; and

(c) Provide that if the employee of the DoD or of the private sector organization (as the case may be) fails to carry out the agreement, such employee shall be liable to the United States for payment of all expenses of the assignment, unless that failure was for good and sufficient reason as determined by the Secretary of Defense.

§ 241.6 Length of details.

(a) A detail shall be for a period of not less than 3 months and not more than 1 year, and may be extended in 3-month increments for a total of not more than 1 additional year by DoD Components and private sector organizations authorized approving officials.

(b) This extension may be granted in 3-month increments not to exceed 1 year. No assignment may commence after September 30, 2013.

§ 241.7 Termination.

An assignment may, at any time and for any reason be terminated by the DoD or the private sector organization concerned.

§ 241.8 Terms and conditions.

(a) A DoD employee assigned under this part:

(1) Remains a Federal employee without loss of employee rights and benefits attached to that status. These include, but are not limited to:

(i) Consideration for promotion;

(ii) Leave accrual;

(iii) Continuation of retirement benefits and health, life, and long-term care insurance benefits; and

(iv) Pay increases the employee otherwise would have received if he or she had not been assigned;

(2) Remains covered for purposes of the Federal Tort Claims Act, and for purposes of injury compensation as described in 5 U.S.C. chapter 81; and

(3) Is subject to any action that may impact the employee's position while he or she is assigned.

(b) An employee of a private sector organization:

(1) May continue to receive pay and benefits from the private sector organization from which such employee is assigned;

(2) Is deemed to be an employee of the DoD for the purposes of:

(i) Chapter 73 of title 5, United States Code (Suitability, Security, and Conduct);

(ii) Sections 201 (Bribery of Public Officials and Witnesses), 203 (Compensation to Members of Congress, Officers and Employees Against and Other Matters Affecting the Government), 205 (Activities of Officers and Employees in Claims Against Other Matters Affecting the Government), 207 (Restrictions on Former Officers, Employees, and Elected Officials of the Executive and Legislative Branches), 208 (Acts Affecting a Personal Financial Interest), 209 (Salary of Government Officials and Employees Payable only by the United States), 603 (Making Political Contributions), 606 (Intimidation to Secure Political Contributions), 607, (Place of Solicitation), 643 (Accounting Generally for Public Money), 654 (Officer or Employee of the United States Converting Property of Another, 1905 (Disclosure of Confidential Information Generally), and 1913 (Lobbying with Appropriated Moneys) of title 18, United States Code;

(iii) Sections 1343, 1344, and 1349(b) of title 31, United States Code;

(iv) The Federal Tort Claims Act and any other Federal tort liability statute;

(v) The Ethics in Government Act of 1978;

(vi) Section 1043 of the Internal Revenue Code of 1986; and

(vii) Section 27 of the Office of Federal Procurement Policy Act; and

(3) May not have access to any trade secrets or to any other nonpublic information which is of commercial value to the private sector organization from which he or she is assigned;

(4) Is subject to such regulations as the President may prescribe;

(5) Is covered by 5 U.S.C. chapter 81, Compensation for Work Injuries; and

(6) Does not have any right or expectation for Federal employment solely on the basis of his or her assignment.

§ 241.9 Costs and reimbursements.

(a) *Payment of Salary and Allowances.* The lending organization (DoD or private sector organization) has full responsibility for payment of all salary and allowances to their employee participating in an ITEP pilot. Both DoD and private sector employees participating in the ITEP pilot are entitled to all benefits afforded to similar employees of their respective lending organizations, including medical care, according to subscribed plans and Worker's Compensation for injuries sustained in the line of duty.

(b) *Business Training and Travel Expenses.* The engaging organization (recipient of the ITEP pilot participant) may pay for any business training and travel expenses incurred by the employee while participating in the ITEP pilot.

(c) *Prohibition.* A private sector organization may not charge the DoD or any agency of the Federal Government, as direct or indirect costs under a Federal contract, for the costs of pay or benefits paid by that organization to an employee assigned to a DoD Component.

§ 241.10 Small business consideration.

The DoD CIO on behalf of the Secretary of Defense shall:

(a) Ensure that, of the assignments made each year, at least 20 percent are from small business concerns (as defined by 5 U.S.C. 3703(e)(2)(A)).

(b) Take into consideration the questions of how assignments might be used to help meet the needs of the DoD with respect to the training of employees in IT.

§ 241.11 Numerical limitation.

The ITEP Pilot is an opportunity for the exchange of knowledge, experience and skills between DoD and the private sector. The DoD has the flexibility to send their employees to the private sector or receive private sector employees, or participate in a one-for-one exchange. In no event may more than 10 employees participate in assignments under this section at any given time.

§ 241.12 Reporting requirements.

(a) For each of fiscal years 2010 through 2015, the Secretary of Defense shall submit annual reports to the congressional defense committees, not later than 1 month after the end of the fiscal year involved, a report on any activities carried out during such fiscal year, including the following information:

(1) Respective organizations to and from which an employee is assigned;

(2) Positions those employees held while they were so assigned;

(3) Description of the tasks they performed while they were so assigned; and

(4) Discussion of any actions that might be taken to improve the effectiveness of the Pilot program, including any proposed changes in the law.

(b) These reports will be prepared and submitted by DoD CIO in coordination with DoD Components participating in the Pilot, to the appropriate congressional committees.

§ 241.13 Implementation.

The DoD CIO is responsible for administering, coordinating and implementing the Pilot Program for the Temporary Exchange of Information Personnel, referred to as the Information Technology Exchange Program (ITEP) pilot. The DoD CIO will coordinate with DoD Components.

Dated: June 15, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0615; FRL–9345–8]

Sedaxane; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of sedaxane in or on multiple food commodities which are identified and discussed later in this document. Syngenta Crop Protection, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective June 20, 2012. Objections and requests for hearings must be received on or before August 20, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2010–0615, is available at *http://www.regulations.gov* or at the OPP Docket in the Environmental Protection Agency Docket Center (EPA/DC), located in EPA West, Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Heather Garvie, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–0034; email address: *garvie.heather@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0615 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before August 20, 2012. Addresses for mail and hand delivery of objections

and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0615, by one of the following methods:

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0615 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), Mail Code: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of August 11, 2010 (75 FR 48667) (FRL–8840–6), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP #0F7721) by Syngenta Crop Protection, Inc., Regulatory Affairs, P.O. Box 18300, Greensboro, NC 27419–8300. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the fungicide sedaxane, in or on barley, grain, seed at 0.01 parts per million (ppm); barley, hay, seed at 0.05 ppm; barley, straw, seed at 0.01 ppm; canola, seed at 0.01 ppm; oat, grain, seed at 0.01 ppm; rye, seed at 0.01 ppm; soybean, forage, seed at 0.06 ppm; soybean, hay, seed at 0.4 ppm; soybean, seed at 0.01 ppm; triticale, seed at 0.01 ppm; wheat, forage, seed at 0.02 ppm; wheat, grain, seed at 0.01 ppm; wheat, hay, seed at 0.07 ppm; and wheat, straw, seed at 0.01 ppm. That notice referenced a summary of the petition prepared by Syngenta Crop Protection, Inc., the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has modified the tolerances to correct commodity definitions and to recommend tolerances other than the proposed tolerances. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *.''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for sedaxane including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with sedaxane follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The toxicological effects reported in the submitted animal studies such as mitochondrial disintegration and glycogen depletion in the liver are consistent with the pesticidal mode of action also being the mode of toxic action in mammals. The rat is the most sensitive species tested, and the main target tissue for sedaxane is the liver. Sedaxane also caused thyroid hypertrophy/hyperplasia. In the acute neurotoxicity (ACN) and sub-chronic neurotoxicity (SCN) studies, sedaxane caused decreased activity, decreased muscle tone, decreased rearing and decreased grip strength.

There are indications of reproductive toxicity in rats, but these effects did not result in reduced fertility. In the rat, no adverse effects in fetuses were seen in developmental toxicity studies at maternally toxic doses. However, in the rabbit, fetal toxicity was observed at the same doses as the dams. Offspring effects in the reproduction study occurred at the same doses causing parental effects, thus there was no qualitative increase in sensitivity in rat pups. Sedaxane is tumorigenic in the liver in the rat and mouse, and led to tumors in the thyroid and uterus in the rat and was classified as ''likely to be carcinogenic to humans.'' Sedaxane was negative in the mutagenicity studies. The 28-day dermal study did not show systemic toxicity at the limit dose of 1,000 milligrams/kilogram/day (mg/kg/day). Sedaxane has low acute toxicity by the oral, dermal, and inhalation routes. It is not a dermal sensitizer, causes no skin irritation and only slight eye irritation.

Specific information on the studies received and the nature of the adverse effects caused by sedaxane as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Sedaxane. Human Health Risk Assessment to Support New Seed Treatment Uses on Canola, Cereal Grains (Barley, Oat, Rye, Triticale, and Wheat), and Soybean'', dated February 16, 2012, pages 37–77 in docket ID number EPA–HQ–OPP–2010–0615.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful

analysis of the doses in each toxicological study to determine the dose at which the NOAEL and the LOAEL of concern are identified. Uncertainty/safety factors (USFs) are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for sedaxane used for human risk assessment is shown in the following Table.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR SEDAXANE FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute Dietary (general populations, including infants and children).	NOAEL = 30 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.30 mg/kg/day. aPAD = 0.30 mg/kg/day.	Rat ACN Study. NOAEL = 30 mg/kg. LOAEL = 250 mg/kg based on reduced activity, decreased rearing, initial inactivity, piloerection, ruffled fur and recumbency, decreased BW, decreased BWG and food consumption (males). In females, weakened condition, swaying gait, decreased activity, reduced muscle tone, and decreased locomotor activity and rearing. The weakened condition, swaying gait and decreased activity were observed on days 2–7, while the other effects were on day 1.
Chronic dietary (All populations)	NOAEL = 11 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.11 mg/kg/day. cPAD = 0.11 mg/kg/day.	Chronic Rat Study. NOAEL = 11/14 mg/kg bw/day male/female. LOAEL = 67/86 mg/kg bw/day male/female in males based on decreased hind limb grip strength, increased liver weight, increased incidences of hepatocyte hypertrophy and eosinophilic foci, and thyroid follicular cell hypertrophy, basophilic colloid, epithelial desquamation and increased phosphate levels (male). In females, it was based on decreased body weight and body weight gain, increased liver weight and the same thyroid histopathology noted above for males.
Cancer (Oral, dermal, inhalation)	Classification: ''Likely to be Carcinogenic to Humans'' based on significant tumor increases in two adequate rodent carcinogenicity studies. $Q_1^* = 4.64 \times 10^{-3}$ (mg/kg/day)$^{-1}$.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_{DB} = to account for the absence of data or other data deficiency. UF_H = potential variation in sensitivity among members of the human population (intraspecies). BW = Body weight. BWG = Body weight gain.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to sedaxane, EPA considered exposure under the petitioned-for tolerances. EPA assessed dietary exposures from sedaxane in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for sedaxane. In estimating acute dietary exposure, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA conducted a highly conservative acute dietary risk assessment which used tolerance level residues and assumed 100 percent crop treated (PCT) for all commodities.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA conducted a highly conservative chronic dietary risk assessment which used tolerance level residues and assumed 100 PCT for all commodities.

iii. *Cancer.* EPA determines whether quantitative cancer exposure and risk assessments are appropriate for a food-use pesticide based on the weight of the evidence from cancer studies and other relevant data. If quantitative cancer risk assessment is appropriate, cancer risk may be quantified using a linear or nonlinear approach. If sufficient information on the carcinogenic mode of action is available, a threshold or nonlinear approach is used and a cancer RfD is calculated based on an earlier noncancer key event. If carcinogenic mode of action data are not available, or if the mode of action data determines a mutagenic mode of action, a default linear cancer slope factor approach is utilized. Based on the data summarized in Unit III.A., EPA has concluded that sedaxane should be classified as ''Likely to be Carcinogenic to Humans'' and a linear approach has been used to quantify cancer risk. This finding is based on significant tumor increases in two adequate rodent carcinogenicity studies. EPA assessed exposure for the purpose of estimating cancer risk

assuming tolerance level residues and 100 PCT for all commodities.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for sedaxane. 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for sedaxane in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of sedaxane. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the FQPA Index Reservoir Screening Tool (FIRST) and Tier II pesticide root zone model (PRZM) (grab working-level sampling, ground water (GW) (Prerelease Version), the estimated drinking water concentrations (EDWCs) of sedaxane for acute exposures are estimated to be 1.4 parts per billion (ppb) for surface water and 8.3 ppb for ground water. The water exposures for the chronic dietary and cancer assessments are estimated to be 0.9 ppb for surface water and 6.5 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 8.3 ppb was used to assess the contribution to drinking water. For chronic and cancer dietary risk assessment, the water concentration value of 6.5 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Sedaxane is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' EPA has not found sedaxane to share a common mechanism of toxicity with any other substances. For the purposes of this tolerance action, therefore, EPA has assumed that sedaxane does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The toxicological database for sedaxane is complete with regard to prenatal and postnatal toxicity, and there are no residual uncertainties. There is no evidence for increased susceptibility following prenatal and/or postnatal exposures to sedaxane based on effects seen in developmental toxicity studies in rabbits or rats. There was no evidence of increased susceptibility in a 2-generation reproduction study in rats following prenatal or postnatal exposure to sedaxane. There is no evidence of neuropathology or abnormalities in the development of the fetal nervous system from the available toxicity studies conducted with sedaxane. Clear NOAELs/LOAELs were established for the developmental effects seen in rats and rabbits as well as for the offspring effects seen in the 2-generation reproduction study. The dose-response relationship for the effects of concern is well characterized. The NOAEL used for the acute dietary risk assessment (30 mg/kg/day), based on effects observed in the ACN study, is protective of the developmental and offspring effects seen in rabbits and rats (NOAELs of 100–200 mg/kg/day).

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity database for sedaxane is complete and includes the immunotoxicity study and neurotoxicity screening battery.

ii. The sedaxane toxicology database did not demonstrate evidence of neurotoxicity. There are no specific concerns for neurotoxicity as the observed effects in the ACN and SCN studies were likely secondary to inhibition of mitochondrial energy production caused by sedaxane. Sedaxane caused changes in apical endpoints such as decreased activity, decreased muscle tone, decreased rearing and decreased grip strength in the ACN and SCN studies. There was no corroborative neuro-histopathology demonstrated in any study, even at the highest doses tested (i.e., 2,000 mg/kg/day). Based on its chemical structure, its pesticidal mode of action and lack of evidence of neuro-histopathology in any acute and repeated-dose toxicity study, sedaxane does not demonstrate potential for neurotoxicity. Since sedaxane did not demonstrate susceptibility to the young or specific neurotoxicity, a developmental neurotoxicity (DNT) study is not required.

iii. There is no evidence that sedaxane results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to sedaxane in drinking water. These assessments will not underestimate the exposure and risks posed by sedaxane.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-term, intermediate-term, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

Sedaxane is a member of the pyrazole carboxamide fungicides. Metabolic processes involving cleavage of the linkage between the pyrazole and

phenyl rings of these compounds have the potential to produce common pyrazole-metabolites. Indeed, confined rotational crops studies for sedaxane and isopyrazam demonstrate that low levels of three common metabolites form. However, due to the low levels of these compounds in rotational crops (≤0.01 ppm), and low concerns about their potential toxicity relative to parent molecules, any risks from aggregation of exposures to common metabolites across chemicals will be insignificant.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to sedaxane will occupy <1% of the aPAD for all populations.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to sedaxane from food and water will utilize <1% of the cPAD for all populations. There are no residential uses for sedaxane.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). A short-term adverse effect was identified; however, sedaxane is not registered for any use patterns that would result in short-term residential exposure. Short-term risk is assessed based on short-term residential exposure plus chronic dietary exposure. Because there is no short-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of short-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short-term risk for sedaxane.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). An intermediate-term adverse effect was identified; however, sedaxane is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for sedaxane.

5. *Aggregate cancer risk for U.S. population.* The Agency has classified sedaxane as ''Likely to be Carcinogenic to Humans'' based on significant tumor increases in two adequate rodent carcinogenicity studies. Accordingly, a cancer dietary risk assessment was conducted, indicating a risk estimate of 7×10^{-7} for the US population. This assessment assumed tolerance level residues, 100 PCT for all commodities, and included modeled drinking water estimates.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to sedaxane residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression. A modification of the Quick, Easy, Cheap, Effective, Rugged, and Safe (QuEChERS) method was developed for the determination of residues of sedaxane (as its isomers SYN508210 and SYN508211) in/on various crops. A successful independent laboratory validation (ILV) study was also conducted on the modified QuEChERS method using samples of wheat green forage and wheat straw fortified with SYN508210 and SYN508211 at 0.005 and 0.05 ppm. The analytical standard for sedaxane, with an expiration date of April 2012, is currently available in the EPA National Pesticide Standards Repository. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov*.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex has not established MRLs for sedaxane.

C. Revisions to Petitioned-For Tolerances

The tolerance levels for feedstuffs for soybean, forage; wheat, forage; wheat, hay; and barley, hay being established by EPA differ from those proposed in the tolerance petition submitted by Syngenta. The Agency used the Organization for Economic Cooperation and Development tolerance calculation procedures to determine that the following tolerance levels are needed: 0.05 for soybean, forage; 0.015 for wheat, forage; 0.06 for wheat, hay; and 0.04 for barley, hay. The petitioner did not propose separate tolerances for feedstuffs derived from oat and rye, however, the Agency is establishing them as follows: Oat, forage at 0.015; oat, hay at 0.06; oat, straw at 0.01; rye, forage at 0.015; and rye, straw at 0.01. The wheat trials depict low but finite residues in forage, straw, and hay. Syngenta proposed, and EPA agrees, that tolerances are needed on these wheat feedstuffs. Because EPA is relying on magnitude of the residue data from wheat and barley to establish oat and rye tolerances, due to the crop similarities and identical use patterns, tolerances on oat and rye feedstuffs are needed as well. A separate tolerance for triticale is not required as wheat tolerances cover triticale by definition 40 CFR 180.1(g).

V. Conclusion

Therefore, the following tolerances are established for residues of sedaxane, in or on wheat, grain at 0.01 ppm; barley, grain at 0.01 ppm; soybean, seed at 0.01 ppm; canola, seed at 0.01 ppm; oat, grain at 0.01 ppm; rye, grain at 0.01 ppm; soybean, forage at 0.05 ppm; soybean, hay at 0.04 ppm; wheat, forage at 0.015 ppm; wheat, hay at 0.06 ppm; wheat, straw at 0.01 ppm; barley, hay at 0.04 ppm; barley, straw at 0.01 ppm; oat, forage at 0.015 ppm; oat, hay at 0.06 ppm; oat, straw at 0.01 ppm; rye, forage at 0.015 ppm and rye, straw at 0.01 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the

Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 8, 2012.

Steven Bradbury,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.665 is added to read as follows:

§ 180.665 Sedaxane; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide sedaxane, including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified in the following table is to be determined by measuring only sedaxane, *N*-[2-[1,1′-bicyclopropyl]-2-ylphenyl]-3-(difluoromethyl)-1-methyl-1*H*-pyrazole-4-carboxamide, as the sum of its *cis*- and *trans*-isomers in or on the commodity.

Commodity	Parts per million
Barley, grain	0.01
Barley, hay	0.04
Barley, straw	0.01
Canola, seed	0.01
Oat, forage	0.015
Oat, grain	0.01
Oat, hay	0.06
Oat, straw	0.01
Rye, forage	0.015
Rye, grain	0.01
Rye, straw	0.01
Soybean, forage	0.05
Soybean, hay	0.04
Soybean, seed	0.01
Wheat, forage	0.015
Wheat, grain	0.01
Wheat, hay	0.06
Wheat, straw	0.01

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect inadvertent residues.* [Reserved]

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BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 23

[Docket No. OST–2011–0101]

RIN 2105–AE10

Airport Concessions Disadvantaged Business Enterprise: Program Improvements

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of Transportation's Airport Concessions Disadvantaged Business Enterprise (ACDBE) regulation to conform it in several respects to the disadvantaged business enterprise (DBE) rule for highway, transit, and airport financial assistance programs. This rule also amends small business size limits to ensure that the opportunity for small businesses to participate in the ACDBE program remains unchanged after taking inflation into account. This final rule also provides an inflationary adjustment in the personal net worth (PNW) cap for owners of businesses seeking to participate in DOT's ACDBE program and suspends, until further notice, future use of the exemption of up to $3 million in an owner's assets used as collateral for financing a concession.

DATES: This rule's amendments to 49 CFR 23.3 and 23.35 are effective June 20, 2012. This rule's amendments to 49 CFR 23.29, 23.33, 23.45, and 23.57 are effective July 20, 2012.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, Room W94–302, 202–366–9310, *bob.ashby@dot.gov* or Wilbur S. Barham, Director, National Airport Civil Rights Policy and Compliance, U.S. Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Room 1030, 202–385–6210, *wilbur.barham@faa.gov.*

SUPPLEMENTARY INFORMATION: On January 28, 2011, the Department of Transportation published a Final Rule making several program improvements to the Department's DBE program rule (49 CFR part 26) for financial assistance programs (76 FR 5083). On May 27, 2011, the Department issued a notice of proposed rulemaking (NPRM) that proposed conforming amendments to the Department's companion rule for the ACDBE program (49 CFR part 23). The Department received a total of nine comments concerning the NPRM from three ACDBE firms, two consultants, one trade association, two airport recipients, and one individual.

In the preamble to the proposed rule, the Department explained that it was not necessary to propose conforming changes to Part 23 that would be parallel to all of the Part 26 changes. The NPRM noted Part 23 has existing provisions that already conform many of the amendments in Part 26. It cited as an example that it was not necessary to include a Part 23 provision parallel to the change to § 26.11 concerning the frequency of reports, since § 23.27(b) already states the appropriate reporting frequency for Part 23 reports.

Additionally, the NPRM noted that there are many Part 26 amendments that apply automatically to Part 23 because certain sections in Part 23 incorporate provisions of Part 26. A list of these amendments was provided in the NPRM, with an explanation of their applicability to the ACDBE program, and are listed below again for reference:

- § 26.31: This amendment, requiring that the DBE directory include the list of each type of work for which a firm is eligible to be certified, applies to the ACDBE program as well.
- § 26.51: Applied in the ACDBE context, this amendment directs recipients that originally set all race-neutral goals to start setting race-conscious concession-specific goals if it appears that the race-neutral approach was not working.
- § 26.53: As applied to ACDBEs, this amended section sets forth the circumstances in which a prime concessionaire has good cause to terminate an ACDBE firm.
- § 26.71: Under this amended section, the types of work an ACDBE firm can perform must be described in terms of the most specific available NAICS code for that type of work.
- § 26.73: This amended section provides that certification of a firm may not be denied solely on the basis that it is a newly formed firm, has not completed projects or contracts at the time of its application, has not yet realized profits from its activities, or has not demonstrated a potential for success.
- § 26.81: The requirements for Unified Certification Programs (UCPs) were amended to require the UCP to revise the print version of the Directory at least once a year.
- § 26.83: The amended procedures for making certification decisions apply in the ACDBE context. The amendments include a new subsection that addresses the procedure for a certification decision involving an application that was withdrawn and then resubmitted.
- § 26.84: This section was removed in the recently issued Part 26 Final Rule.
- § 26.85: This is a section describing the process of interstate certification for a DBE firm. This includes the information the applicant must provide to the other state (''State B''), what actions State B must take when it receives an application, and appropriate reasons for making a determination that there is good cause to believe that the home state's, State A, certification of the firm is erroneous or should not apply in State B.

Today's final rule also includes the inflationary adjustment of the size limits on small businesses participating in the ACDBE program. On April 3, 2009, the DOT adopted a final rule that required it to adjust the general ACDBE gross receipts caps for inflation every two years using the same method, and to publish a final rule to update the size standard numbers. This final rule updates the ACDBE gross receipts caps that were published on April 3, 2009, to reflect 2011 dollars through the fourth quarter of calendar year 2011.

Comments and Responses

In an effort to ensure that the Part 26 changes made sense in the ACDBE context, the NPRM requested comments on the following as to whether there were terms or concepts in the Part 26 amendments that needed to be modified to conform to Part 23.

Improving Interstate Certification

The Department received one comment from a trade association recommending the issuance of a guidance document to ensure that the objectives of improving interstate certification are achieved. In regards to the § 26.85 process, this same association was concerned that the process for interstate certification for an ACDBE firm would not be applied consistently. They strongly recommended that training be provided to address the special circumstances that arise in the ACDBE context and that a central agency should verify certifications where there were disparate results among different UCPs. The association also strongly recommended that key certification-related elements, such as the certification application and Personal Net Worth (PNW) forms list of requested items, be used without modification.

Another commenter believed that while improvement of interstate certification was a much needed initial step, DOT should adopt a program that recognized certifications nationally for ACDBE firms. This commenter identified several benefits for a national approach, including ease for a national prime concessionaire to solicit ACDBE participation in an airport concession regardless of geographic area, thereby increasing the availability and the participation of ACDBEs as sub-concessionaires. This commenter also noted that a national certification program would assist recipients in reporting car rental accomplishments, since any certified ACDBE utilized by the car rental companies (most of whom are national firms) could be included. The commenter continued by recommending that the rule be amended to allow a recipient to count the participation of an ACDBE firm that is certified in the firm's home state regardless of where the concession is located.

DOT Response

The Department agrees that standardizing forms and interpretations and providing and fostering training for UCP personnel that addresses airport concessions and ACDBE circumstances, can improve consistency in the review of ACDBE applications and in the interstate certification process. In support of these objectives, the Department noted in the final Part 26 rule that it plans to issue a follow-on NPRM that will address improvements in the certification application and PNW forms, which certification agencies then would be required to use without

change. These changes would apply to the ACDBE program as well. However, the Department does not view having a central agency verify an ACDBE's certification status, after receiving disparate results among different UCPs, to be a practical solution. The purpose of the interstate certification process is to address the very issue of disagreements among certifying agencies in a consistent manner. Moreover, there is already an office to which a firm can appeal an ACDBE certification denial decision—the U.S. DOT's Departmental Office of Civil Rights.

The Department had previously requested comments on the issue of nationwide approaches to certification and had responded to those comments in the May 10, 2010, NPRM to Part 26 DBE program improvements (75 FR 25818 (2010)). The approach the Department finally adopted was to first take steps to make interstate certification easier under the current statewide approach to certification. The Department believes that this approach is a significant incremental step toward nationwide reciprocity, which would increase the likelihood of achieving the benefits identified for the ACDBE program.

Regarding the stated need for certification training, we note that there is a requirement in the recently enacted FAA Modernization and Reform Act of 2012 that the Department develop mandatory certification training. The Department is currently considering how best to implement this mandate. In doing so, we can build on existing certification training that the Department already provides through webinars, conferences, and workshops.

Fostering Small Business Participation

Though the Department stated in the NPRM that it would not propose a parallel provision in Part 23 for amended § 26.39 on fostering small business participation, we asked for comments on whether additional small-business-related provisions are needed in the concessions context. The Department explained that its current focus was on applying this provision to Federally-assisted contracting and associated issues such as ''unbundling.'' Two commenters responded with strong support for including a small business element in the ACDBE program that would unbundle large concession opportunities. They believed that certain business practices presented barriers to equitable participation by ACDBEs. The prime concessionaire model, they said, did not permit small-to-medium size ACDBEs to compete successfully for prime contract opportunities, as large firms under this model would be allowed to dominate the national marketplace as prime concessionaires. Consequently, this would create a significant obstacle for smaller firms trying to penetrate the market. Another reason given for including a small business element was that ACDBEs faced the same difficulties as other small businesses, such as obtaining loans. The association commenter stated that if a small business element provision was adopted for the ACDBE program, it should allow for a great deal of local flexibility in determining an airport's small business provisions, and that FAA should monitor recipients' programs to ensure that the new small business provision would not undermine the existing ACDBE program. This association also suggested that the FAA should review whether the SBA small business size standards are appropriate for ACDBEs and recommended that the FAA perform increased monitoring and enforcement of the good faith effort provisions. A commenter also suggested that FAA provide more guidance on this provision.

DOT Response

The Department appreciates the comments that have been received on the question regarding additional small business-related provisions in the concessions context. The initial response from commenters indicates there may be barriers to ACDBEs in the concessions program that a small business element may help to alleviate. Although we are not issuing a small business program requirement for the ACDBE program at this time, we will consider these comments in deciding whether to proceed with a small business provision for the ACDBE program in the future. The Department also hopes to learn from airport recipients' implementation of the small business element requirement for the Part 26 program.

Adjusting the Personal Net Worth Cap

To conform to the Part 26 inflationary adjustment in the personal net worth (PNW) cap, the NPRM proposed to amend § 23.35 by substituting $1.32 million for the current $750,000 as the personal net worth (PNW) standard. The NPRM explained that the Part 23 PNW provision is separate from the PNW provision in Part 26, so a specific Part 23 amendment was needed to maintain consistency between the two regulations. The ACDBE commenters strongly supported the PNW increase, and they applauded the Department for increasing the current standard to promote growth among ACDBEs and providing greater access to capital from financial institutions and capital markets.

One commenter, however, disagreed with the use of the Consumer Price Index (CPI) for determining the PNW increase, saying that it presumes erroneously that an ACDBE owner has grown his or her personal worth at the same rate as a non-ACDBE. The commenter suggested instead that the Department conduct an independent analysis to arrive at a PNW amount. The commenter also suggested that there be a lower PNW limit for ACDBEs entering the program, and a higher PNW limit for ACDBEs that are growing and may eventually graduate from the program. Two commenters suggested that further rulemaking was needed to make automatic adjustments to the PNW for inflation. One suggestion was to make the adjustment at a regular interval of every two or three years.

The Department also received several comments on the issue of retirement assets. Two ACDBEs, an ACDBE consultant, and an association strongly supported a change in the rule to exempt retirement assets from the disadvantaged business owner's PNW. Two commenters believed that it would be poor policy to discourage owners from providing for their retirement. They suggested that, as a minimum, certain types of retirement assets, such as company sponsored 401(k), profit sharing, and pension plans, which have capped contributions and are regulated by federal law, should be excluded from the PNW.

DOT Response

The Department has adopted the Part 26 inflationary adjustment of the PNW cap to $1.32 million for the Part 23 program, with the inflationary adjustment based on the Department of Labor's consumer price index (CPI) calculator. In choosing the CPI, the Department explained in the final Part 26 rule that the CPI appeared to be the one approach that is most relevant to an individual's personal wealth. While no index is perfect, the more complex approaches suggested by some commenters, including the development of a DOT-specific index, do not appear practicable. In the Preamble to the final rule for Part 26, the Department announced that it was not ready at that time to decide the issue of retirement assets. We are still evaluating this matter.

PNW Third Exemption

The NPRM also requested comments on whether the third exemption that is currently a part of the Part 23 PNW definition should be retained in the definition, deleted altogether, modified, or replaced with a different but more workable provision aimed to achieve a similar objective. This third exemption is an exemption from the PNW calculation for ''other assets that the individual can document as necessary to obtain financing or a franchise agreement for the initiation or expansion of his or her ACDBE firm (or have in fact been encumbered to support existing financing for the individual's ACDBE business), to a maximum of $3 million.'' The NPRM summarized the background and rationale for the third exemption, which was added in the 2005 ACDBE rule (see 70 FR 14497–14499 (March 22, 2005)) to respond to concerns of commenters that a PNW standard of $750,000 could inhibit opportunities for business owners to enter the concessions field and expand existing businesses. The Department's decision to establish the third exemption was also made in order to preserve the underlying standard PNW for both the Part 23 and Part 26 programs while responding to comments that a higher standard could be justified in some cases in the ACDBE context. The Department also noted in the NPRM that it is aware that the $3 million exemption from PNW for assets used as collateral for a loan has been difficult to implement, and we asked for comments on how to improve the definition of this exemption so that if retained, the exemption could be implemented more effectively.

Three commenters supported retaining the third exemption, and one commenter opposed it. An association noted that the uniqueness of the ACDBE industry required that ACDBEs have the ability to maintain capital to finance growth, development and expansion. One commenter opposed the exemption because the commenter believed it could be used as a tool to hide assets. This commenter was also concerned that the practice of an ACDBE using its personal property as collateral was not parallel to non-ACDBE business practices. Another commenter said the definition was unclear and that implementation required clarification since there was inconsistent application by UCPs. This commenter noted that the number of applicants using the third exemption was minimal and questioned whether there was a need to retain it. Although we did not receive specific suggestions for improvement, most commenters on this issue desired more guidance.

Because of the very limited number of responses the Department received to its request for comment on this issue, the FAA engaged a consultant to gather additional information on the subject. (A copy of the consultant's report has been placed in the docket.) The consultant contacted all certifying agencies in the DOT database, ultimately receiving responses from 20 agencies which, among them, had received 16 requests for use of the third exemption over the time the provision had been in effect. Thirteen requests were granted (three of which were approved after appeals to the Departmental Office of Civil Rights). Three requests were denied. There were differences among these agencies in terms of the documentation that they required, and most thought that there was a lack of clarity in the Department's requirement that called for additional guidance and training. Some of the ACDBE firms interviewed said that uncertainty about the application of the provision would deter them from seeking to use the third exemption. The ACDBEs interviewed saw value in the provision, but agreed that further clarification and guidance were needed.

DOT Response

Current evidence indicates that the third exemption is not used frequently, and, when it is, it often appears to be the subject of considerable uncertainty and confusion on the part of ACDBEs and certifying agencies alike. It may be subject to misuse. We believe that further consideration is necessary to determine whether the provision should be retained, modified, or deleted. Further study, including gathering more in-depth information about how the provision has been used to date, would be helpful in making this determination.

However, we recognize that deciding what modifications in the provision, if any, would be needed to clarify the provision, or developing additional guidance to clarify the existing provision, are likely to take a good deal of time. Moreover, this rule's inflationary adjustment of the underlying PNW cap to $1.32 million, which maintains the real dollar value of the previous $750,000 cap, may have the effect of mitigating what the Department saw, in 2005, as the need for adopting a provision of this kind. On the other hand, it is possible, given the comments of some program participants, that a provision of this kind can have continuing utility, especially with further clarification, guidance, and training.

For these reasons, the Department has decided neither to continue the existing provision in effect nor to delete it. Rather, the Department is suspending the effectiveness of the provision until further notice. It is important to note that this suspension of the third exemption is prospective, not retroactive. This means that, where a firm applies for ACDBE certification or an existing firm obtains financing, a loan, or a franchise agreement *after* the effective date of this rule change, the third exemption will not apply. In such cases, the only exemptions from the PNW calculation will be the equity the disadvantaged owner of a firm has in his or her primary personal residence and the individual's ownership interest in the ACDBE firm in question.

However, in cases where a recipient or certifying agency has already calculated a firm owner's PNW, based on the third exemption based on financing, a loan, or a franchise agreement obtained *before the effective date of this change,* that calculation will then be allowed to stand. This includes situations in which an original calculation of PNW including the third exemption was made in the context of a certification that is later reviewed. Of course, as the owner pays down a loan, the amount of the owner's assets supporting that loan, and thus the assets that can be exempted from the PNW calculation, will decline with the loan balance. In all cases involving the application of the third exemption, the FAA retains the discretion to examine documents to ensure that the third exemption is being used properly.

Meanwhile, the Department will continue to evaluate this issue and seek additional input from stakeholders before deciding whether ultimately to remove, modify, or replace the third exemption. The Department will also consider what guidance may be helpful in helping recipients to use the third exemption, or a modification of it, if and when its effectiveness is reinstated.

Monitoring the Work of ACDBEs

The NPRM proposed to adopt in § 23.29 the change that was made in § 26.37 concerning enhanced monitoring of the actual performance of work by DBEs. The NPRM explained that airports would be responsible for reviewing documents and actual on-site performance to ensure that ACDBEs were actually performing the work committed to them during the concession award process, and to certify that they have done so to the FAA. All comments received on this issue were in favor of increased monitoring. An association commenter suggested that

the Department and FAA provide guidance on practices that airports might use to monitor effectively the work of ACDBEs, given available resources.

DOT Response

The Department has adopted the proposed change for enhanced monitoring in § 23.29. The FAA also plans to make available to all sponsors a compilation of best practices in monitoring DBE and ACDBE programs. This includes monitoring the work of ACDBEs as a product of the post award compliance reviews that it conducts of airport recipients' DBE and ACDBE programs, and a review of documents obtained from other sources. The FAA plans to develop such a compilation and post the results on its Web site.

Adjusting a Recipient's Overall Goal

The NPRM also asked for comment on the provision in § 23.45(i) concerning the requirement to submit an adjustment to a recipient's overall goal to the FAA if a new concession opportunity estimated to be $200,000 or more in estimated average annual gross revenues arose at a time that fell between normal submission dates for overall goals. Section 23.45(i) currently requires the recipient to submit its adjustment at least six months before executing the concession agreement for the new concession opportunity. The NPRM asked whether this provision should be retained or changed. Both airport recipient commenters (a large hub and a small hub) and an association commenter objected to the six-month submission requirement to the FAA. All asserted that the six-month submission would impose an undue burden on airport recipients, as it would create long and unacceptable lead times for executing new concession agreements that could result in funding problems for the concessionaire. The small hub airport recipient commenter recommended instead, that FAA require only a one to two month submission time, whereas the large hub airport recipient commenter believed that it was unnecessary to submit an adjustment at all since existing procedures for developing a three-year overall goal accommodate the identification of projected new opportunities.

DOT Response

The Department believes that many airport recipients may still require an adjustment to their overall goal when it has one or more new concession opportunities that, for whatever reason, were not projected in their three-year plan. Since these opportunities may be significant and may offer ACDBE opportunities, airports are required to conduct an analysis to determine ACDBE availability and whether their overall goal should be adjusted. The reasons for the current requirement for sponsors to submit an adjusted goal at least six-months before executing the concession agreement were to encourage the sponsor to obtain approval from the FAA prior to the issuance of a new concession opportunity that may offer ACDBE opportunities and to provide the FAA a reasonable amount of time to review the airport's submission. In response to the concerns expressed by the two airport sponsors and the association commenter, the Department is making two changes. In place of requiring an adjusted goal submission at least six months before executing the concession agreement, the Department will require that an adjusted goal be submitted to the FAA no later than 90 days prior to the sponsor's issuance of the solicitation. These two changes, the trigger event and the change in the submission deadline to the FAA, should help a sponsor obtain FAA's prior approval of its adjusted overall goal and include any ACDBE participation in the new concession opportunity consistent with the sponsor's approved ACDBE goal. FAA anticipates that it can complete its review within 45 days of receiving the sponsor's adjusted overall goal submission, assuming FAA has received all necessary information and any follow-up clarifications from the sponsor in a timely manner.

Accountability for Meeting Overall Goals

The NPRM proposed to revise § 23.57 to make its accountability provisions parallel to those of the recently amended § 26.47(c). The rationale for doing so is the same as for Part 26. The NPRM requested comments on whether any further modifications of the language of this provision would be useful for purposes of the ACDBE program. Two commenters supported the accountability provision, while two commenters opposed it. Opponents of the accountability provision believed that the inability of the recipient to meet the overall goal was often the result of factors that were beyond their control. One small hub airport commenter said that revenue generation was not in the control of the airport and that its experience was that the concessionaire often did not meet its ACDBE goal, but had to show its good faith efforts instead. Another commenter said there were events and fluctuations, such as shifts in airline traffic, which were beyond the control of the operator and could impact achievement. This commenter added that there may not be new opportunities available to make up for shortfalls in the overall goal achievement. Another commenter who opposed the provision said it would produce an undue burden for airport recipients. The commenter said that it already had a process that worked to correct goal shortfalls. Two commenters suggested that the threshold for shortfall be clearly defined. The airport recipient commenters were concerned about being placed in a ''non-compliant'' status. Due to the seriousness of being considered ''non-compliant,'' one commenter suggested that recipients should be given the opportunity to make corrections before a non-compliance determination is made by the FAA. Another commenter suggested that it simply submit a report as part of its annual accomplishment report that would allow for a fuller explanation of why it was unable to meet its overall goals, rather than be judged ''non-complaint''. One commenter suggested that the regulation list acceptable corrective actions and that recipients be allowed to modify their overall goal if the analysis supported the modification.

DOT Response

We agree that achievement of concession goals may vary over time, in part because concession receipts are driven by events that are beyond an airport's control. Factors of this kind may increase or decrease ACDBE achievements, compared to earlier projections. We do not believe, however, that these or other factors or any other factors should override the obligation of airport recipients to examine their concessions program in good faith and to explain and attempt to correct for circumstances or policies that may lead to shortfalls in meeting overall ACDBE goals. This examination, for example, may lead to a recommendation to take advantage of contract changes to negotiate for increased ACDBE participation that may not have been contemplated before, to discuss with ACDBEs and other concessionaires potential new opportunities, or to plan for future ACDBE participation through an extensive and comprehensive outreach program. When shortfalls can rationally be attributed specifically to factors beyond an airport's control, the airport would still explain it shortfall by reference to such factors. A requirement to report the analysis and corrective action called for under § 23.57(b)(3) to the FAA is imposed only on the CORE

30 airports,[1] or other airports as designated by the FAA, in order to limit information collection burdens on other airports.

As we explained in the preamble to the final rule for Part 26, the accountability mechanism is designed to promote transparency and accountability, and it is not the same as a finding of non-compliance. An airport recipient would only be in non-compliance if it refuses to make an accountability assessment when it falls below its overall goal. We also addressed the issue of administrative burden in the previously mentioned preamble. We do not believe that any work needed to meet this requirement is ''undue,'' because the steps of an accountability review for recipients who fail to meet their overall goal should be a regular part of their program review when a key business objective is not met. Therefore, we are retaining the proposed accountability provision.

ACDBE Gross Receipts Size Standards

Under the current DOT rule, if the airport concessions firm's annual gross receipts average over the preceding three fiscal years exceed $52,470,000, then it is not considered a small business eligible to be certified as an ACDBE. This final rule makes an inflationary adjustment to the size standards for eligibility as an ACDBE. This adjustment compensates for the rise in the general level of prices over time from the first quarter of calendar year 2009 through the fourth quarter of calendar year 2011. It should be emphasized that this action does not increase the size standard for ACDBES in real dollar terms. It simply maintains the status quo, adjusting to 2011 dollars.

In order to make an inflation adjustment to the gross receipts figures, the Department of Transportation uses a Department of Commerce price index. The Department of Commerce's Bureau of Economic Analysis prepares constant dollar estimates of state and local government purchases of goods and services by deflating current dollar estimates by suitable price indices.[2] These indices include purchases of durable and non-durable goods, and other services. Using these price deflators enables the Department to adjust dollar figures for past years' inflation. Given the nature of the Department's ACDBE program, adjusting the gross receipts cap in the same manner in which inflation adjustments are made to the costs of state and local government purchases of goods and services is simple, accurate, and fair.

The inflation rate on purchases by state and local governments for the current year is calculated by dividing the price deflator for the fourth quarter of calendar year 2011 (123.622) by calendar year 2009's first quarter price deflator (114.971). The result of the calculation is 1.0752, which represents an inflation rate of 1.075% from the first quarter of calendar year 2009. Multiplying the $52,470,000 figure for small business enterprises by 1.0752 equals $ 56,415,744, which will be rounded off to the nearest $10,000, or $56,420,000.

Therefore, under this final rule, if a firm's gross receipts, averaged over the firm's previous three fiscal years, exceeds $56,420,000, then it exceeds the airport concessions small business size limit contained in § 23.33.

ACDBE Car Rental Company Size Standards

Under the existing rule, car rental companies are not eligible to participate in the ACDBE program if their average gross receipts over the three previous fiscal years exceed $69,970,000. This final rule adjusts the size standard for car rental companies to reflect the effects of inflation on the real dollar value.

The inflation rate on purchases by state and local governments for 2011 is calculated by dividing the price deflator for the fourth quarter of calendar year 2011 (123.622) by calendar year 2009's first quarter price deflator (114.971). The result of the calculation is 1.0752, which represents an inflation rate of 1.075% from the first quarter of calendar year 2009. Multiplying the $69,970,000 figure for car rental companies by 1.0752 equals $75,231,744, which will be rounded off to the nearest $10,000, or $75,230,000.

Therefore, under this final rule, if a car rental company's gross receipts, averaged over the company's previous three fiscal years, exceeds $75,230,000, then it exceeds the airport concessions car rental company size limit contained in § 23.33.

Regulatory Analyses and Notices

Administrative Procedure Act

Under the Administrative Procedure Act (5 U.S.C. 553(b)), an agency may waive the normal notice and comment requirements if it finds that they are impracticable, unnecessary, or contrary to the public interest. The Department finds that notice and comment for the portion of the rule at § 23.33 relating to inflationary adjustment of size limits for ACDBE eligibility is unnecessary and contrary to the public interest because it relates only to ministerial updates of business size standards to account for inflation, which does not change the standards in real dollar terms. These updates will assist entities attempting to be part of the Department's ACDBE program and should not be unnecessarily delayed. Accordingly, the Department finds good cause under 5 U.S.C. 553(b) to waive notice and opportunity for public comment. Other provisions of the final rule were preceded by an opportunity for notice and comment.

In addition, under the Administrative Procedure Act (5 U.S.C. 553(d)), an agency may make a final rule effective immediately upon publication, as distinct from the normal 30 days following publication, if it relieves a restriction or otherwise for good cause. The Department is making the amendments to §§ 23.3 and 23.35 effective immediately. The amendment to § 23.3 suspends prospectively, until further notice, the ''third exemption'' from the definition of personal net worth. Failure to make this suspension effective immediately would create a clear incentive for potential applicants to hurry their applications to recipients in order to ''beat the clock.'' The Department has good cause to make the change effective immediately to prevent this foreseeable result of the normal 30-day delay in the effective date of a final rule provision.

The amendment to § 23.35 harmonizes the personal net worth criterion of the ACDBE (49 CFR part 23) with that of the DBE rule (49 CFR part 26), which the Department adjusted for inflation in 2011. Both will now be $1.32 million. This action relieves a restriction on the personal net worth that may be held by an ACDBE owner, which previously had been limited to $750,000. The Department has good cause for making this change effective upon publication because failing to do would expose otherwise eligible firms to the denial of ACDBE certification on the basis of an about-to-change personal net worth criterion, potentially causing these firms to lose business opportunities. In addition, it makes sense to have this provision go into effect at the same time as the suspension of the third exemption.

[1] The 30 CORE airports presently handle 63 percent of the country's passengers and 68 percent of its operations.

[2] See Bureau of Economic Analysis National Income and Product Account Table; Table 3.10.4 Price Indexes for Government Consumption Expenditures and General Government Gross Output.

Executive Orders 12866 and 13422 and DOT Regulatory Policies and Procedures

This is a non-significant regulation for purposes of Executive Orders 12866 13422 and the Department of Transportation's Regulatory Policies and Procedures. The provisions in the rule involve administrative modifications to several provisions of a long-existing and well-established program, designed to improve the program's implementation and to harmonize these provisions with parallel provisions in the January 2011 amendments to 49 CFR part 26, the Department's DBE rule for financial assistance programs, which was itself a non-significant rulemaking. These portions of the rule do not alter the direction of the program, make major policy changes, or impose significant new costs or burdens.

One provision of the rule concerns a ministerial adjustment for inflation of a small business size standard that does not change the standard in real dollar terms. This provision will not impose burdens on any regulated parties. In addition, this provision would not create inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required for the rule.

Regulatory Flexibility Act

A number of provisions of the rule reduce small business burdens or increase opportunities for small businesses. The personal net worth change would allow some small businesses to remain in the ACDBE program for a longer period of time. Small airport recipients would not be required to prepare or transmit reports concerning the reasons for overall goal shortfalls and corrective action steps to be taken as stated in § 23.57. Only a limited number of large airports would have to file these reports. These provisions of the rule do not make major policy changes that would cause recipients to expend significant resources on program modifications. With regard to the provision on inflationary adjustment of ACDBE size limits, we have evaluated the effects of this action on small entities and have determined that the only effect of this portion of the rule on small entities is to allow some small businesses to continue to participate in the ACDBE program by adjusting for inflation. For these reasons, the Department certifies that the rule does not have a significant economic effect on a substantial number of small entities.

Federalism

A rule has implications for federalism under Executive Order 13132, *Federalism,* if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under the Order and have determined that it does not have significant implications for Federalism, since it merely makes administrative modifications to an existing program, and updates the dollar limits and size limits to define small businesses for the Department's ACDBE program. It does not change the relationship between the Department and State or local governments, preempt State law or State regulation, affect the States' ability to discharge traditional State governmental functions, or impose substantial direct compliance costs on those governments.

Unfunded Mandates Reform Act of 1995

Since this rule pertains to a nondiscrimination requirement and affects only Federal financial assistance programs, the Unfunded Mandates Act does not apply.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995, DOT has submitted the Information Collection Requests (ICRs) below to the Office of Management and Budget (OMB). Before OMB decides whether to approve these proposed collections of information and issue a control number, the public must be provided 30 days to comment. Organizations and individuals desiring to submit comments on the collections of information in this rule should direct them to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, Office of Information and Regulatory Affairs, Washington, DC 20503. OMB is required to make a decision concerning the collection of information requirements contained in this rule between 30 and 60 days after publication of this document in the **Federal Register**. The Department's NPRM included the requisite PRA information. OMB did not submit comments to the rulemaking docket. As provided in 5 CFR 1320.11(h), the Department will submit relevant material to OMB in order to receive an OMB control number for the information collections. The Department will publish a **Federal Register** notice concerning the assignment of a control number when that occurs.

We will respond to any OMB or public comments on the information collection requirements contained in this rule. The Department will not impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required.

For the information of interested persons we estimate that the total incremental annual burden hours for the information collection requirements in this rule is 13,101 hours.

The following is the incremental collection requirement in this rule:

Certification of Monitoring: (49 CFR 23.29)

Each recipient would certify that it had conducted post-award monitoring of contracts which would be counted for ACDBE credit to ensure that ACDBEs had done the work for which credit was claimed. The certification is for the purpose of ensuring accountability for contract monitoring which the regulation already requires.

Respondents: 301 (i.e., airports with covered concessions).

Frequency: 1,311 non-car rental contracts to ACDBEs; 691 car rental concession contracts to ACDBEs, for a total of 2,002, or an average of 6.7 ACDBE contracts per airport.

Estimated Burden per Response: ½ hour.

Estimated Total Annual Burden: 1,001 hours.

Accountability Mechanism (49 CFR 23.57)

If a recipient failed to meet its overall goal in a given year, it would have to determine the reason for its failure and establish corrective steps. Of the 301 airports covered by this rule, 30 of the largest recipients would transmit this analysis to DOT if their overall goal was not achieved; smaller recipients would perform the analysis but would not be required to submit it to DOT. We estimate that about half of the recipients (150) would be subject to this requirement in a given year, and 20 of the 30 largest airports would have to submit their reports to the FAA in a given year.

Respondents: 150.

Estimated Average Burden per Response: 80 hours + 5 additional hours for recipients sending report to DOT. Total number of recipients sending report to DOT: 20.

Estimated Total Annual Burden: 12,100 hours.

List of Subjects in 49 CFR Part 23

Administrative practice and procedure, Airports, Civil rights,

Concessions, Government contracts, Grant programs—transportation, Minority businesses, Reporting and recordkeeping requirements.

Issued this 7th Day of June 2012 at Washington DC.

Ray LaHood,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department of Transportation amends 49 CFR part 23 as follows:

PART 23—PARTICIPATION OF DISADVANTAGED BUSINESS ENTERPRISE IN AIRPORT CONCESSIONS

■ 1. The authority citation for part 23 continues to read as follows:

Authority: 49 U.S.C. 47107; 42 U.S.C. 2000d; 49 U.S.C. 322; Executive Order 12138.

■ 2. In § 23.3, revise the definition of ''personal net worth'' to read as follows:

§ 23.3 What do the terms used in this part mean?

* * * * *

Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth (PNW) does not include the following:

(1) The individual's ownership interest in an ACDBE firm or a firm that is applying for ACDBE certification; (2) The individual's equity in his or her primary place of residence; and (3) Other assets that the individual can document are necessary to obtain financing or a franchise agreement for the initiation or expansion of his or her ACDBE firm (or have in fact been encumbered to support existing financing for the individual's ACDBE business) to a maximum of $3 million. The effectiveness of this paragraph (3) of this definition is suspended with respect to any application for ACDBE certification made or any financing or franchise agreement obtained after June 20, 2012.

* * * * *

■ 3. Revise § 23.29 to read as follows:

§ 23.29 What monitoring and compliance procedures must recipients follow?

As a recipient, you must implement appropriate mechanisms to ensure compliance with the requirements of this part by all participants in the program. You must include in your concession program the specific provisions to be inserted into concession agreements and management contracts setting forth the enforcement mechanisms and other means you use to ensure compliance. These provisions must include a monitoring and enforcement mechanism to verify that the work committed to ACDBEs is actually performed by the ACDBEs. This mechanism must include a written certification that you have reviewed records of all contracts, leases, joint venture agreements, or other concession-related agreements and monitored the work on-site at your airport for this purpose. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of concession performance for other purposes.

■ 4. Revise § 23.33 to read as follows:

§ 23.33 What size standards do recipients use to determine the eligibility of ACDBEs?

(a) As a recipient, you must, except as provided in paragraph (b) of this section, treat a firm as a small business eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous three fiscal years, do not exceed $56.42 million.

(b) The following types of businesses have size standards that differ from the standard set forth in paragraph (a) of this section:

(1) *Banks and financial institutions:* $1 billion in assets;

(2) *Car rental companies:* $75.23 million average annual gross receipts over the firm's three previous fiscal years, as adjusted by the Department for inflation every two years from April 3, 2009.

(3) *Pay telephones:* 1,500 employees;

(4) *Automobile dealers:* 350 employees.

(c) The Department adjusts the numbers in paragraphs (a) and (b)(2) of this section using the Department of Commerce price deflators for purchases by State and local governments as the basis for this adjustment. The Department publishes a **Federal Register** document informing the public of each adjustment.

§ 23.35 [Amended]

■ 5. In § 23.35, remove the number ''$750,000'' and add in its place ''$1.32 million''.

■ 6. Revise § 23.45(i) to read as follows:

§ 23.45 What are the requirements for submitting overall goal information to the FAA?

* * * * *

(i) If a new concession opportunity, the estimated average annual gross revenues of which are anticipated to be $200,000 or greater, arises at a time that falls between normal submission dates for overall goals, you must submit an appropriate adjustment to your overall goal to the FAA for approval no later than 90 days before issuing the solicitation for the new concession opportunity.

■ 7. Revise § 23.57(b) and (c) to read as follows:

§ 23.57 What happens if a recipient falls short of meeting its overall goals?

* * * * *

(b) If the awards and commitments shown on your Uniform Report of ACDBE Participation (found in Appendix A to this Part) at the end of any fiscal year are less than the overall goal applicable to that fiscal year, you must do the following in order to be regarded by the Department as implementing your ACDBE program in good faith:

(1) Analyze in detail the reasons for the difference between the overall goal and your awards and commitments in that fiscal year;

(2) Establish specific steps and milestones to correct the problems you have identified in your analysis and to enable you to meet fully your goal for the new fiscal year;

(3) (i) If you are a CORE 30 airport or other airport designated by the FAA, you must submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (b)(1) and (2) of this section to the FAA for approval. If the FAA approves the report, you will be regarded as complying with the requirements of this section for the remainder of the fiscal year.

(ii) As an airport not meeting the criteria of paragraph (b)(3)(i) of this section, you must retain analysis and corrective actions in your records for three years and make it available to the FAA, on request, for their review.

(4) The FAA may impose conditions on the recipient as part of its approval of the recipient's analysis and corrective actions including, but not limited to, modifications to your overall goal methodology, changes in your race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.

(5) You may be regarded as being in noncompliance with this part, and therefore subject to the remedies in § 23.11 of this part and other applicable regulations, for failing to implement your ACDBE program in good faith if any of the following things occur:

(i) You do not submit your analysis and corrective actions to FAA in a timely manner as required under paragraph (b)(3) of this section;

(ii) FAA disapproves your analysis or corrective actions; or

(iii) You do not fully implement:

(A) The corrective actions to which you have committed, or

(B) Conditions that FAA has imposed following review of your analysis and corrective actions.

(c) If information coming to the attention of FAA demonstrates that current trends make it unlikely that you, as an airport, will achieve ACDBE awards and commitments that would be necessary to allow you to meet your overall goal at the end of the fiscal year, FAA may require you to make further good faith efforts, such as modifying your race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

[FR Doc. 2012–14893 Filed 6–19–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 375

[Docket No. FMCSA–2012–0119]

RIN 2126–AB52

Transportation of Household Goods in Interstate Commerce; Consumer Protection Regulations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) amends the regulations governing the transportation of household goods to remove an obsolete requirement related to collect calls, resolve ambiguities, and reduce a regulatory burden on household goods motor carriers.

DATES: This final rule is effective August 20, 2012, unless an adverse comment, or notice of intent to submit an adverse comment, is either submitted to the above docket via *http://www.regulations.gov* on or before July 20, 2012 or reaches the Docket Management Facility by that date. If an adverse comment, or notice of intent to submit an adverse comment, is received by July 20, 2012, FMCSA will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register**.

ADDRESSES: You may submit comments identified by docket number FMCSA–2012–0119 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30) West Building Ground Floor Room W12–140, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these methods. See the ''Public Participation and Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Brodie Mack, FMCSA, Household Goods Team Leader, Commercial Enforcement and Investigations Division at (202) 385–2400 or by email at *brodie.mack@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation and Comments

If you would like to participate in this rulemaking, you may submit comments and related materials. All comments received will be posted, without change, to http://www.regulations.gov and will include any personal information you have provided.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (FMCSA–2012–0119), indicate the specific section of this direct final rule to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that the Agency can contact you if it has questions regarding your submission. As a reminder, FMCSA will only consider adverse comments as defined in 49 CFR 389.39(b) and explained below.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Final Rule'' and insert ''FMCSA–2012–0119'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Docket Management Facility, please enclose a stamped, self-addressed postcard or envelope.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''FMCSA–2012–0119'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. If you do not have access to the Internet, you may also view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

II. Regulatory Information

FMCSA publishes this direct final rule under 49 CFR 389.39 because the Agency determined that the rule is a routine and non-controversial amendment to 49 CFR part 375. This rule clarifies that certain independent delivery services are not household goods motor carriers, removes an obsolete provision requiring household goods motor carriers to post notices relating to acceptance of collect telephone calls, clarifies the Agency's requirement that re-negotiated estimates contain detailed descriptions of the goods or services that gave rise to the re-negotiation, and requires household goods motor carriers that relinquish possession of goods to permanent storage to do so in the shipper's name. If no adverse comments, or notices of intent to submit an adverse comment, are received by July 20, 2012, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days before the effective date, FMCSA will publish a document in the **Federal Register** stating that no adverse comments were

received and confirming that this rule will become effective as scheduled. However, if the Agency receives any adverse comments or notices of intent to submit an adverse comment, FMCSA will publish a document in the **Federal Register** announcing the withdrawal of all or part of this direct final rule. If FMCSA decides to proceed with a rulemaking following receipt of any adverse comments, the Agency will publish a separate notice of proposed rulemaking (NPRM) and provide a new opportunity for comment.

A comment is considered ''adverse'' if the comment explains why this rule or a part of this rule would be inappropriate, including a challenge to its underlying premise or approach, or would be ineffective or unacceptable without a change.

III. Legal Basis for the Rulemaking

The Secretary of Transportation's (Secretary) general jurisdiction to establish regulations over transportation of property by motor carrier is found at 49 U.S.C. 13501. Household goods motor carriers are a subset of property motor carriers and are required by 49 U.S.C. 13902 to register with FMCSA as household goods motor carriers.

This rulemaking is based on the statutory provisions cited above and on the authority Congress granted to the Secretary to regulate the operations of household goods motor carriers in the ICC Termination Act of 1995 (Pub. L. 104–88, 109 Stat. 803, Dec. 29, 1995) and in the Household Goods Mover Oversight Enforcement and Reform Act of 2005, Title IV, Subtitle B of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144, Aug. 10, 2005).

The Secretary has delegated these various authorities to the FMCSA Administrator (49 CFR 1.73(a)). This rulemaking only applies to household goods motor carriers that provide for-hire transportation in interstate or foreign commerce.

IV. Discussion of the Rule

FMCSA updates the household goods motor carrier regulations at 49 CFR part 375 to eliminate an obsolete requirement, remove uncertainty, and reduce a regulatory burden on household goods motor carriers.

FMCSA amends the definition of ''Household goods motor carrier'' in § 375.103 to clarify that motor carriers that provide delivery services transporting furniture, appliances or other furnishings between a factory or a store and an individual's household are not household goods motor carriers for the purposes of 49 CFR part 375. Currently, Agency regulations define a household goods carrier as a motor carrier that transports household goods and provides some or all of the following services: (1) Binding and nonbinding estimates, (2) inventorying, (3) protective packing and unpacking of individual items at personal residences, and (4) loading and unloading at personal residences (49 U.S.C. 13102(12); 49 CFR 375.103). FMCSA does not currently consider delivery services that load and/or provide protective packing of household goods at a factory or store and then unload and/or unpack at an individual's household to fall within this definition. Regardless, the Agency has received a number of requests for clarification. In addition, the Agency believes that some motor carriers providing this type of delivery service have obtained household goods operating authority registration because they mistakenly believed it was an Agency requirement. As a result, these carriers may have incurred unnecessary expenses to establish and maintain household goods operating authority. This change definitively establishes that these types of motor carriers are not household goods motor carriers, so long as they only transport household goods between a factory or retailer and an individual's household.

Section 375.209 currently requires household goods motor carriers to establish and maintain a procedure for responding to complaints and inquiries from individual shippers. Paragraph (b) requires the procedure to include four items. FMCSA removes the third requirement which directs household goods motor carriers to include a statement of who must pay for complaint and inquiry telephone calls. This requirement was originally adopted to require household goods motor carriers to indicate whether they would accept collect calls from shippers. This reference is outdated and no longer necessary. Most motor carriers and shippers conduct business using a combination of Internet, email or mobile telephone communications that have rendered this requirement obsolete.

Section 375.403(a)(6) provides that if a shipper requests that a household goods carrier transport goods or perform services in excess of those previously identified in a binding estimate and the carrier services the shipment, the carrier has one of three options before loading the shipment: (i) Reaffirm the binding estimate; (ii) negotiate a revised written binding estimate listing the additional goods and services; or (iii) convert the original estimate to a written non-binding estimate, if the shipper agrees. FMCSA amends § 375.403(a)(6)(ii) to clarify that if the parties negotiate a revised written binding estimate, the additional goods or services must be accurately listed, in detail. Although FMCSA currently interprets § 375.403(a)(6)(ii) to require a detailed listing of the additional goods or services, this change will resolve any ambiguity as to the motor carrier's obligation under this section.

Similarly, § 375.405(b)(7) provides that if a shipper requests that a household goods carrier transport goods or perform services in excess of those identified in a non-binding estimate and the carrier services the shipment, then the carrier has one of two options before loading the shipment: (i) reaffirm the non-binding estimate or (ii) negotiate a revised written non-binding estimate listing the additional goods and services. FMCSA amends § 375.405(b)(7)(ii) to clarify that if the parties negotiate a revised non-binding estimate, the additional goods or services must be accurately listed, in detail. As it does with binding estimates, FMCSA currently interprets § 375.405(b)(7)(ii) to require a detailed listing of additional goods or services. Regardless, this change will resolve any ambiguity as to the motor carrier's obligation when it re-negotiates a non-binding estimate under this section.

FMCSA amends § 375.609 by adding a new paragraph (h) requiring that when a carrier places goods into permanent storage, the storage arrangements must be made in the individual shipper's name and the carrier must provide the shipper's contact information to the warehouse. FMCSA regulations provide that once a shipper's goods are placed in permanent storage, the motor carrier's liability ends and the individual shipper is subject to the rules, regulations and charges of the warehouseman (49 CFR 375.609(b)(4)). This change will facilitate transfer of the goods to the individual shipper from the warehouseman, after the motor carrier is no longer in possession of the goods.

V. Regulatory Analyses

A. Regulatory Planning and Review

This action does not meet the criteria for a ''significant regulatory action,'' either as specified in Executive Order 12866 as supplemented by Executive Order 13563 (76 FR 3821, January 18, 2011), or within the meaning of the DOT regulatory policies and procedures (44 FR 1103, February 26, 1979). The estimated economic costs of the rule do not exceed the $100 million annual threshold nor does the Agency expect

the rule to have substantial Congressional or public interest. Therefore, this rule has not been formally reviewed by the Office of Management and Budget. No expenditures are required of the affected population because this rule reaffirms or clarifies existing Agency interpretations, removes uncertainty and reduces a regulatory burden.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FMCSA is not required to prepare a final regulatory flexibility analysis under 5 U.S.C. 604(a) for this final rule because the agency has not issued an NPRM prior to this action.

C. Federalism (Executive Order 13132)

A rule has federalism implications if the rule has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on the States. FMCSA analyzed this rule under E.O. 13132 and have determined that it does not have federalism implications.

D. Unfunded Mandates Reform Act of 1995

FMCSA is not required to prepare an assessment under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531, *et seq.,* evaluating a discretionary regulatory action because the Agency has not issued an NPRM prior to this action.

E. Executive Order 12988 (Civil Justice Reform)

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

F. Executive Order 13045 (Protection of Children)

FMCSA analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The Agency determined that this rule will not create an environmental risk to health or safety that may disproportionately affect children.

G. Executive Order 12630 (Taking of Private Property)

FMCSA reviewed this final rule in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not affect a taking of private property or otherwise have taking implications.

H. Privacy Impact Assessment

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rule does not require the collection of any personally identifiable information.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program. FMCSA has determined this rule will not result in a new or revised Privacy Act System of Records for FMCSA.

I. Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

J. Paperwork Reduction Act

This direct final rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

K. National Environmental Policy Act and Clean Air Act

FMCSA analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). The Agency has determined under its environmental procedures Order 5610.1, published March 1, 2004 in the **Federal Register** (69 FR 9680), that this action is categorically excluded (CE) from further environmental documentation under Appendix 2, Paragraph 6(b) and 6(m) of the Order (69 FR 9702). The CE in Paragraph 6(b) applies to the editorial aspects of this rule, and the CE in Paragraph 6(m) relates to regulations implementing procedures applicable to the operations of carriers engaged in the transportation of household goods. In addition, the Agency believes this rule includes no extraordinary circumstances that will have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

L. Executive Order 13211 (Energy Effects)

FMCSA has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use. The Agency has determined that it is not a ''significant energy action'' under that Executive Order because it is not economically significant and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 49 CFR Part 375

Advertising, Arbitration, Consumer protection, Freight, Highways and roads, Insurance, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

The Final Rule

For the reasons stated in the preamble, FMCSA amends 49 CFR part 375 in title 49, Code of Federal Regulations, chapter III, subchapter B, as follows:

PART 375—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE COMMERCE; CONSUMER PROTECTION REGULATIONS

■ 1. The authority citation for part 375 is revised to read as follows:

Authority: 49 U.S.C. 13102, 13301, 13501, 13704, 13707, 13902, 14104, 14706, 14708; subtitle B, title IV of Pub. L. 109–59; and 49 CFR 1.73.

■ 2. Amend § 375.103 to add paragraph (4) to the definition of Household goods motor carrier, to read as follows:

§ 375.103 What are the definitions of terms used in this part?

* * * * *

Household goods motor carrier * * *

(4) The term does not include any motor carrier that acts as a service for the delivery of furniture, appliances, or other furnishings between a factory or a store and an individual's household.

* * * * *

§ 375.209 [Amended]

■ 3. Amend § 375.209 by removing paragraph (b)(3) and redesignating paragraph (b)(4) as (b)(3).

■ 4. Amend § 375.403 by revising paragraph (a)(6)(ii) to read as follows:

§ 375.403 How must I provide a binding estimate?

(a) * * *

(6) * * *

(ii) Negotiate a revised written binding estimate accurately listing, in detail, the additional household goods or services.

* * * * *

■ 5. Amend § 375.405 by revising paragraph (b)(7)(ii) to read as follows:

§ 375.405 How must I provide a non-binding estimate?

* * * * *

(b) * * *

(7) * * *

(ii) Negotiate a revised written non-binding estimate accurately listing, in detail, the additional household goods or services.

* * * * *

■ 6. Amend § 375.609 by adding new paragraph (h) to read as follows:

§ 375.609 What must I do for shippers who store household goods in transit?

* * * * *

(h) When you place household goods in permanent storage, you must place the household goods in the name of the individual shipper and provide contact information for the shipper in the form of a telephone number, mailing address and/or email address.

Issued on: June 14, 2012.

Anne S. Ferro,

Administrator, FMCSA.

[FR Doc. 2012–14999 Filed 6–19–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 580

[Docket No. NHTSA–2011–0109; Notice 2]

Petition for Approval of Alternate Odometer Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of final determination.

SUMMARY: The State of Florida (''Florida'') has petitioned for approval of alternate odometer requirements. Florida's petition [1] is granted as to vehicle transfers involving casual or private sales, and Florida's petition is denied as to sales involving licensed dealers and sales of leased vehicles.

DATES: *Effective date:* July 20, 2012.

ADDRESSES: Requests for reconsideration must be submitted in writing to Administrator, National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. Requests should refer to the docket and notice number above.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Marie Choi, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 (Telephone: 202–366–1738) (Fax: 202–366–3820).

SUPPLEMENTARY INFORMATION:

I. Introduction

Federal odometer law, which is largely based on the Motor Vehicle Information and Cost Savings Act of 1972 (Cost Savings Act) [2] and Truth in Mileage Act of 1986, as amended (TIMA),[3] contains a number of provisions to limit odometer fraud and ensure that the buyer of a motor vehicle knows the true mileage of the vehicle. The Cost Savings Act requires the Secretary of Transportation to promulgate regulations requiring the transferor (seller) of a motor vehicle to provide a written statement of the vehicle's mileage registered on the odometer to the transferee (buyer) in connection with the transfer of ownership. This written statement is generally referred to as the odometer disclosure statement. Further, under TIMA, vehicle titles themselves must have a space for the odometer disclosure statement and states are prohibited from licensing vehicles unless a valid odometer disclosure statement on the title is signed and dated by the transferor. Titles must also be printed by a secure process. With respect to leased vehicles, TIMA provides that the regulations promulgated by the Secretary require written mileage disclosures be made by lessees to lessors upon the lessor's transfer of the ownership of the leased vehicle. Lessors must also provide written notice to lessees about odometer disclosure requirements and the penalties for not complying with them. Federal law also contains document retention requirements for odometer disclosure statements.

TIMA's motor vehicle mileage disclosure requirements apply in a State unless the State has alternate requirements approved by the Secretary. The Secretary has delegated administration of the odometer program to NHTSA. Therefore, a State may petition NHTSA for approval of such alternate odometer disclosure requirements.

Seeking to implement an electronic vehicle title transfer system, Florida has petitioned for approval of alternate odometer disclosure requirements. In 2009, NHTSA reviewed certain requirements for alternative state programs and approved the Commonwealth of Virginia's alternate odometer disclosure program. 74 FR 643, Jan. 7, 2009. Florida's program is similar to Virginia's program in some respects and broader in scope than Virginia's in others. Like Virginia's program, the scope of Florida's proposed program does not include transactions involving an out-of-state party. Unlike Virginia's program, Florida's proposed program encompasses transactions involving leased vehicles and odometer disclosures by power of attorney. In addition, Florida's proposed program would use different mechanisms to document mileage than Virginia's.

In its initial determination, NHTSA reviewed the statutory background and set out the agency's tentative view on applicable statutory factors governing whether to grant a state's petition. NHTSA initially determined that Florida's petition regarding proposed alternate disclosure requirements for vehicle transfers involving casual or private sales satisfied Federal odometer law, and that Florida's petition regarding sales involving licensed dealers and sales of leased vehicles did not satisfy Federal odometer law. *See* 76 FR 48101, Aug. 8, 2011.

[1] ''Florida's petition'' or ''petition'' shall refer to Florida's Petition for Approval of Alternate Odometer Disclosure Requirements (Dec. 21, 2009) and the Letter from Carl A. Ford, Director, Florida Division of Motor Vehicles, to O. Kevin Vincent, Chief Counsel, National Highway Traffic Safety Administration supplementing Florida's Petition for Approval of Alternate Odometer Disclosure Requirements (Oct. 5, 2010).

[2] Sec. 401–13, Public Law 92–513, 86 Stat. 961–63.

[3] Sec. 1–3, Public Law 99–579, 100 Stat. 3309.

After careful consideration of comments, NHTSA has made a final determination, which is set forth below.

II. Statutory Background

NHTSA reviewed the statutory background of Federal odometer law in its consideration and approval of Virginia's petition for alternate odometer disclosure requirements. *See* 73 FR 35617 and 74 FR 643. The statutory background of the Cost Savings Act and TIMA and the purposes behind TIMA, as they relate to odometer disclosure, other than in the transfer of leased vehicles and vehicles subject to liens where a power of attorney is used in the disclosure, are discussed at length in NHTSA's final determination granting Virginia's petition. 74 FR 647–8. A brief summary of the statutory background of Federal odometer law and the purposes of TIMA, including odometer disclosure requirements for leased vehicles follows.

In 1972, Congress enacted the Cost Savings Act, among other things, to prohibit tampering with odometers on motor vehicles and to establish certain safeguards for the protection of buyers with respect to the sale of motor vehicles having altered or reset odometers. *See* Sec. 401, Pub. L. 92–513, 86 Stat. 961–63. The Cost Savings Act required that under regulations to be published by the Secretary, the transferor of a motor vehicle provide a written vehicle mileage disclosure to the transferee. It also prohibited odometer tampering, and provided for enforcement. *See id.* Sec. 408.[4] In general, the purpose for the disclosure was to assist buyers to know the true mileage of a motor vehicle.

A major shortcoming of the odometer provisions of the Cost Savings Act was their failure to require that the odometer disclosure statement be on the vehicle's title. In a number of states, the disclosures were on separate documents that could be easily altered or discarded and did not travel with the title. *See* 74 FR 644. Consequently, the disclosure statements did not necessarily deter odometer fraud employing altered documents, discarded titles, and title washing. *Id.*

Another significant shortcoming involved leased vehicles. The lessor is considered the transferor of the vehicle in leased vehicle sales. Titles to leased vehicles are often transferred without the lessor obtaining possession of the vehicle. Lessors without direct access to their vehicles had to rely solely on lessees to provide actual mileage information. However, lessees had no obligation to provide actual mileage information to lessors upon vehicle transfer. This environment facilitated roll backs of odometers.

Congress enacted TIMA in 1986 to address the Cost Savings Act's shortcomings. It amended the Cost Savings Act by adding section 408(d) to prohibit states from licensing vehicles unless the new owner (transferee) submitted a title from the seller (transferor) containing the seller's signed and dated vehicle mileage statement. *See* Sec. 2, Pub. L. 99–579, 100 Stat. 3309; 74 FR 644. TIMA also prohibits the licensing of vehicles for use in any state, unless the title issued to the transferee is printed using a secure printing process or other secure process, indicates the vehicle mileage at the time of transfer, and contains additional space for a subsequent mileage disclosure by the transferee when it is sold again. *Id.*

TIMA also added section 408(e) to the Cost Savings Act requiring that the Secretary issue regulations regarding odometer disclosures for leased vehicles.[5] The regulations promulgated by the Secretary were to require written mileage disclosures by lessees to lessors upon the lessor's transfer of the ownership of the leased vehicle. The regulations were to require lessors to provide written notice to lessees about the odometer disclosure requirements and the penalties for not complying with them. Also, the regulations were to provide document retention requirements for odometer disclosure statements: Lessors had to retain disclosures made by lessees for at least four years following the date that the lessor transfers that vehicle.[6] *Id.*

TIMA added a provision to the Cost Savings Act allowing states to have alternate odometer disclosure requirements with the approval of the Secretary of Transportation. Section 408(f) of the Cost Savings Act, as amended, states that the odometer disclosure requirements of subsections (d) and (e)(1) shall apply in a state unless the state has in effect alternate motor vehicle mileage disclosure requirements approved by the Secretary. Section 408(f)(2) further states that the Secretary shall approve alternate motor vehicle mileage disclosure requirements submitted by a state unless the Secretary determines that such requirements are not consistent with the purpose of the disclosure required by subsection (d) or (e), as the case may be.

In 1988, Congress amended section 408(d)(1) of the Cost Savings Act to permit the use of a secure power of attorney for purposes of odometer mileage disclosure in circumstances where the title was held by a lienholder, if allowed by state law. Sec. 401, Pub. L. 100–561, 102 Stat. 2817. Congress required NHTSA to issue a rule ensuring that disclosures be made on the power of attorney document of the actual mileage at the time of transfer and that the mileage be restated exactly by the person exercising power of attorney on the title in the space therefor. *Id.* The rule, consistent with the purposes of the Act and the need to facilitate enforcement thereof, was to prescribe that the power of attorney form be issued by the state to the transferee using a secure process, as provided for titles, and provide for retention of a copy with the original submitted back to the State. *Id.* In 1989, NHTSA implemented the 1988 statutory amendments by promulgating amendments to the odometer disclosure regulations, providing that a transferor may give a secure power of attorney to a transferee for the purpose of mileage disclosure in two circumstances—when the transferor's title is physically held by a lienholder or when the title is lost. In either instance, use of a power of attorney document for mileage disclosure is permissible only if otherwise permitted by state law.[7]

[4] Section 408(a) directed the Secretary to prescribe rules requiring any transferor to provide written disclosure to the transferee in connection with the transfer of ownership of a motor vehicle, including a disclosure of the cumulative mileage registered on the odometer, and a disclosure that the actual mileage was unknown if the transferor knew that the odometer reading was different from the number of miles the vehicle has actually traveled. In addition, the Secretary was directed to prescribe the manner in which the information would be disclosed and the manner in which the information would be retained. Finally, it was a violation for any transferor to violate any rules under Section 408 or to knowingly give a false statement to a transferee in making any disclosure.

[5] Pursuant to Section 408(e), in the case of any leased motor vehicle, the rules under Section 408(a) were to require written disclosure regarding mileage to be made by a lessee to a lessor upon the lessor's transfer of ownership of a leased motor vehicle. Under these rules, the lessor of a leased motor vehicle would have to provide written notice to the lessee regarding mileage disclosure requirements, and the penalties for failing to comply with them. The lessor would be required to retain the lessee's disclosure with respect to any motor vehicle for a period of at least 4 years following the date the lessor transferred that vehicle. If the lessor transferred ownership of any leased motor vehicle without obtaining possession of such vehicle, the lessor could, in making the disclosure required by Section 408(a), indicate on the title the mileage disclosed by the lessee unless the lessor had reason to believe that such disclosure by the lessee did not reflect the actual mileage of the vehicle.

[6] Regulations implementing TIMA were published on August 5, 1988. 53 FR 29464. Federal regulations require lessors to retain odometer disclosure statements received from lessees for a period of five years. 49 CFR 580.8(b).

[7] Regulations implementing the amendment were published on August 30, 1989. 54 FR 35879. The regulations addressed numerous aspects of

In 1990, Congress again amended section 408(d) of the Cost Savings Act.[8] The amendment provided that the rule adopted under the 1988 amendment not require that a vehicle be titled in the state in which the power of attorney was issued and addressed retention of powers of attorneys by states. Sec. 7(a), Pub. L. 101–641, 104 Stat. 4654, 4657.[9]

In 1994, in the course of the recodification of various laws pertaining to the Department of Transportation, the Cost Savings Act, as amended, was repealed, reenacted and recodified without substantive change. *See* Pub. L. 103–272, 108 Stat. 745, 1048–1056, 1379, 1387 (1994). The odometer statute is now codified at 49 U.S.C. 32701 *et seq*. In particular, Section 408(a) of the Cost Savings Act was recodified at 49 U.S.C. 32705(a). Sections 408(d) and (e), which were added by TIMA (and later amended), were recodified at 49 U.S.C. 32705(b) and (c). The provisions pertaining to approval of state alternate motor vehicle mileage disclosure requirements were recodified at 49 U.S.C. 32705(d).

III. Florida's Program

As stated in NHTSA's initial determination, Florida, which is in the process of developing an electronic title transfer system (e-title), has petitioned for approval of alternate odometer disclosure requirements. 76 FR 48101.[10] Florida requests approval of alternate disclosure requirements for transfers of motor vehicles in transactions between private parties (casual sales), transfers of motor vehicles, whether subject to a lien [11] or not subject to a lien, between private parties and motor vehicle dealers, and transactions involving leased vehicles.

Florida law authorizes the Florida Department of Highway Safety and Motor Vehicles (''Department'') to accept any application for vehicle title by electronic means. *See* FLA. STAT. ANN. § 319.40 (1997). Florida seeks to amend its statutes to allow the continuation of an electronic certificate of title in lieu of a paper certificate of title for transfers of motor vehicles. With electronic titling there would not be a paper certificate of title on which to disclose the vehicle's mileage at the time of transfer of ownership.

A. Florida's Existing Electronic Titling System

Florida currently stores its titling and registration information (including images of all supporting title documentation) in a secure database referred to as the Florida Real-time Vehicle Information System, or FRVIS. According to Florida's petition, either a Department employee or an authorized tag agent at a state-authorized tag office enters information into this database. Only a Department employee or tag agent can change FRVIS title information, including owner information and the odometer disclosure. For title images (scanned, electronic copies of vehicle title documents), FRVIS stores all applicable data and stores images of documents that remain in the title history for the vehicle. Florida law also requires that the Department retain all documents regarding applications for, and issuance of, certificates of title—including titles, manufacturers' statements of origin, applications, and supporting documents submitted with the application such as odometer statements, VIN verifications, bills of sale, indicia of ownership, dealer reassignments, photographs, and any personal identification, affidavits, or documents required by or submitted to the Department—for a period of at least 10 years. FLA. STAT. ANN. § 319.23(11). The title resides as an electronic record in FRVIS; however, secure paper copies of the title can be generated from FRVIS if needed.

In Florida, lienholders hold the title to the vehicles securing the loan. Florida began its electronic title and lien (ELT) program in 2001. Under the current process, the Department contracts with vendors who provide secure electronic interface with Florida's titling system to participating lienholders. The vendors then contract with financial institutions who wish to participate in Florida's electronic title and lien program. The participating lienholders allow their titles to remain electronic. Electronic liens are satisfied through the secure electronic interface and the title is retained electronically until a paper copy is requested.[12]

B. Florida's Proposed e-Odometer Program

Florida's proposed e-Odometer program can be divided into three transaction types: (1) Casual or private sales; (2) sales involving licensed motor vehicle dealers (including sales from private owners to licensed dealers, sales between licensed dealers, and sales from licensed dealers to private buyers); and (3) sales involving leased vehicles. The Agency understands that the program, as proposed, applies only when the transferred vehicle is electronically titled at the time of transfer of the vehicle.

1. Casual or Private Sales

Currently, a Florida resident wishing to sell his/her vehicle in a casual or private sale needs to have a paper title. The seller signs the paper title and discloses the odometer reading to the buyer on the title. The buyer then signs the paper title verifying the odometer reading. (The odometer disclosure is made on the title and signed by the buyer and seller at the time of transfer, in accordance with 49 U.S.C. 32705 and 49 CFR 580.5.) The buyer takes the paper title to a tag office, which processes the transfer of ownership and prints a new paper title in the buyer's name, or, if the buyer so elects, creates an e-title to be held by the Department.[13] Whether the buyer elects to maintain the title electronically or in paper form, the tag office sends the old paper title and any other supporting documentation to the Department for scanning into FRVIS.

Under Florida's proposed e-title program,[14] if a seller of a vehicle has an

disclosure by power of attorney, including the form, certification by the person exercising the power of attorney, and access of the transferee to prior title and power of attorney documents.

[8] Section 7(a) of Public Law 101–641 directed that the third sentence of subsection (d)(2)(C) be amended. However, there was no subsection (d)(2)(C) in section 408. The amendment was restated as amending the third sentence of subsection (d)(1)(C) as the probable intent of Congress. This amendment is currently codified at 49 U.S.C. 32705(b)(2)(A).

[9] Regulations implementing this amendment were published on September 20, 1991. 56 FR 47681.

[10] We note that Florida's petition differs markedly from other petitions for alternate odometer disclosure requirements NHTSA has received from other states. Florida's proposal relies on tag agents, rather than an online system, to verify the identity of the transferor and transferee in casual sales. These tag agents also verify chain of ownership and odometer disclosure in all transfers before title can be issued. Identity verification in transactions other than casual sales (for which identity of the parties is verified by a tag agent) is left to the parties to the transaction(s). Florida's proposal encompasses a wide variety of transactions and relies on paper forms for a number of these transactions.

[11] Under Florida law, a lienholder physically possesses the title to the vehicle. Thus, Florida permits odometer disclosure by power of attorney when title is held by a lienholder and now petitions for alternate requirements regarding odometer disclosure by power of attorney.

[12] Approximately 24 percent of the more than ten million vehicle lien records Florida has are electronic. Additionally, almost 50 percent of all new transactions with liens are maintained electronically under ELT.

[13] The buyer can request a paper title from the tag agent and pay a $10 fee, or request a paper title online and pay a $2.50 fee. The fee is intended to encourage buyers to maintain vehicle title electronically. This fee applies to any paper title request under Florida's current system and under the State's proposed program.

[14] Florida's proposed program does not apply in a casual vehicle sale by a seller holding a paper title, only those with e-title. A seller holding a paper title must follow the current procedures to transfer the vehicle—the buyer and seller sign and

Continued

electronic title and wants to transfer that title, the seller and buyer would visit an authorized tag office together. After providing adequate identification to the tag agent, the buyer and seller would sign, in the presence of the tag agent, a secure reassignment form transferring ownership and disclosing the odometer reading. A title is then issued in the buyer's name and is stored electronically, or the buyer may choose to have a paper title issued. The secure reassignment form and copies of the identification are scanned into the title record in FRVIS.[15] Florida maintains that these would travel with the title.

2. Sales Involving Licensed Motor Vehicle Dealers

a. Retail Sales of Vehicles With an e-Title But Not Subject to a Lien

Under Florida's current scheme, when a licensed motor vehicle dealer is involved, the process for transferring a title to an e-titled vehicle not subject to a lien is as follows. The seller with e-title brings the vehicle to a dealership. The seller and dealer complete a secure power of attorney with odometer disclosure. The dealer obtains a paper title from a tag agency or online from the Department. The dealer transfers the odometer disclosure information from the secure power of attorney to the title and signs the title as buyer and seller. When the dealer sells the vehicle to another buyer, the dealer and buyer complete the reassignment on the paper title with an odometer disclosure. The dealer takes both the secure power of attorney and the paper title to a tag agency. The title is then transferred to the buyer and a receipt is provided. The buyer has the option of obtaining a new paper title or having the Department hold the title electronically. The secure power of attorney and paper title are scanned and stored with title history in FRVIS. We note that this process does not comply with federal law, because it uses secure power of attorney in a manner not authorized by Federal regulations. 49 CFR 580.13.

Under Florida's proposed program, a seller with e-title would bring the vehicle to a dealership. The seller and dealer complete a secure reassignment form with odometer disclosure. When the dealer sells the vehicle to another buyer, the dealer and buyer complete another secure reassignment form with odometer disclosure. The dealer takes both of the secure reassignment forms to a tag agency. The vehicle title is then transferred to the buyer and a receipt is provided. The buyer has the option to obtain a paper title or have the Department hold the title electronically. The secure reassignment forms are scanned and stored with the vehicle title history in FRVIS.

b. Sales of Vehicles With e-Title Subject to a Lien (e-Lien in Florida)

Currently, when a licensed motor vehicle dealer is involved, the process for transferring an e-titled vehicle subject to an e-lien is as follows: A seller with e-title/e-lien brings the vehicle to a dealership. The seller and dealer complete a secure power of attorney with odometer disclosure. The dealer pays off the lien and the lienholder electronically releases the lien via a secure electronic interface with the Department (ELT). The dealer then obtains the paper title from a tag agency or online from the Department. The dealer transfers the odometer information from the secure power of attorney to the title and signs the title as buyer and seller. When the dealer sells the vehicle to another buyer, the dealer and buyer complete the reassignment on the title with odometer disclosure. The dealer takes both the secure power of attorney and the paper title to the tag agency. The vehicle title is transferred to the buyer and a receipt is provided. The buyer has the option of obtaining a new paper title or having the Department hold the title electronically. The secure power of attorney and old paper title are scanned and stored with title history in FRVIS.

Under Florida's proposed program, a seller with e-title would bring the vehicle to a dealership. The seller and dealer complete a secure reassignment form with an odometer disclosure. The dealer pays off the lien and the lienholder electronically releases the lien via secure electronic interface with the Department (ELT). When the dealer sells the vehicle to another buyer, the dealer and buyer complete another secure reassignment form with an odometer disclosure. The dealer then takes both secure reassignment forms to a tag agency, where the title is transferred to the buyer and a receipt is provided. The buyer has the option of obtaining a paper title or having the Department hold the title electronically. The secure reassignment forms are scanned and stored with the vehicle title history in FRVIS.

c. Dealer Reassignments

Florida currently does not allow for an e-title in the dealer reassignment process. A dealer must obtain a paper title in order to resell the vehicle. Once there is a paper title, the dealer uses the current paper process. The dealer uses the back of the title to document reassignments, including odometer disclosure. Once this form is full (Florida allows for three reassignments on the title), the dealer will use a secure title reassignment supplement (HSMV 82994) which includes the required odometer disclosures. When a vehicle is ultimately sold to a customer, the paper title and all secure title reassignment supplements are provided to the tag agency, and forwarded to the Department for scanning and storing in the title record.

Under Florida's proposed system, the dealer would use a secure reassignment supplement instead of having to obtain a paper title. Any subsequent reassignments would also use the secure reassignment supplement. When the vehicle is ultimately sold to a retail customer, all secure reassignment supplements would be provided to the tag agency for verification of the chain of ownership and verification of the odometer disclosure. All documents would be forwarded to the Department for scanning and storing in FRVIS.

3. Sales Involving Leased Vehicles

In the case of leased vehicles, the lessor typically retains ownership of the vehicle, but does not possess it. The lessor, as a transferor, must comply with the federal odometer disclosure requirements when it subsequently transfers title of a leased vehicle. As noted by Florida, Federal laws require written mileage disclosures to be made by lessees to lessors upon the lessor's transfer of the ownership of the leased vehicle.

Florida's current process for transferring leased vehicles is as follows. The lessor holds the vehicle's paper title. When the lease ends (for example, in a trade-in or buyout situation), the lessee brings the vehicle to a dealership. The lessee signs an Odometer Disclosure Statement. The lessor transfers the odometer reading to the title. The lessor signs title over to the dealer (or other party) along with the Odometer Disclosure Statement. When the dealer sells the vehicle to a buyer, the dealer and buyer complete the reassignment on the paper title with the odometer disclosure. The documents are then sent to an authorized tag agency, where the title is transferred to the buyer and a receipt is provided. The

make the required odometer disclosure on the back of the paper title. The buyer then can bring the signed title containing the required odometer disclosure statement to an authorized tag agent and elect at that time to have the title maintained by the State electronically. If the buyer elects e-title and later sells the vehicle in a casual sale, he can do so by following the procedures for transferring e-title.

[15] The Agency understands that the electronic documents are linked to the vehicle title history by title number and VIN.

buyer has the option of obtaining a new paper title or having the Department hold the title electronically. The old paper title and supporting documentation are scanned and stored with the vehicle title history in FRVIS.

Under Florida's proposal, the lessor holds an e-title. When the lease ends, the lessee would bring the vehicle to a dealership. The lessee signs an odometer disclosure statement. The lessor then signs a secure power of attorney to the dealer which includes the odometer disclosure. The dealer signs a secure reassignment form agreeing with the odometer disclosure. When the dealer sells the vehicle to another buyer, the dealer takes the documents (bill of sale, reassignment document, and power of attorney) to the tag agency, where the title is transferred to the buyer and a receipt is provided. The buyer has the option of obtaining a new paper title or having the Department hold the vehicle title electronically. All documents are sent to Department and scanned into the vehicle title history in FRVIS.

C. Florida e-Odometer Implementation Schedule

Florida proposes implementing its electronic title or ''e-title'' system in three phases. Under the first phase, which Florida states is complete, participating lienholders are allowed, but not required, to have their titles and liens held electronically by the Department. This option allows lienholders to avoid maintaining paper lien portfolios. The Department and the lienholders encourage owners who satisfy their liens to continue to maintain the title electronically.

Under the second phase of the e-title project, dealers would be allowed to buy and sell e-title vehicles and take e-title vehicles in on trade without acquiring a paper title. It is the Agency's understanding that the program will extend to leased vehicles, including end-of-lease vehicles coming back to the dealer and vehicles being traded in prior to the end of the lease. Lessors will give the dealer power of attorney to disclose the vehicle mileage, as indicated by the lessee on an odometer disclosure statement, on a secure reassignment form, which will then be used to transfer title from the lessor to a subsequent purchaser. This process will obviate the need for the dealer to obtain a paper title.

The third phase of the project would extend e-title capability to private or casual sales. Under the proposal, the seller (transferor) and buyer (transferee) will have two options for completing a motor vehicle sale. Currently, the vehicle's title is either held physically by the vehicle owner or the vehicle is titled electronically. If the vehicle is titled electronically, the owner now must acquire a secure paper copy of the title prior to transferring the vehicle. The transferor makes the required odometer disclosure on the title and both parties sign the title, effectuating transfer of the vehicle. Under Florida's proposed program, if the vehicle has an e-title, the transferor would not be required to obtain a paper title to transfer it. The transferor and transferee will have the option of going to a tag agent or tax collector's office and, after providing adequate identification to the agent, executing a secure reassignment form to transfer title from the transferor to the transferee without the need to first acquire a paper title.[16]

D. Florida's Position on Meeting the Purposes of TIMA

As noted in in NHTSA's initial determination, Florida submitted that its proposed e-Odometer program met the purposes of TIMA. 76 FR 48110. The petition, as supplemented on October 5, 2010, identified the purposes of TIMA as amended and the State's assessment on how its proposed program would comply with each purpose.

1. Vehicle Transfers in the Absence of a Lease Agreement

a. Casual or Private Sales

In its petition, Florida referred to NHTSA's prior final determinations granting petitions for alternate odometer disclosure requirements, cited the purposes of TIMA as amended as articulated by NHTSA,[17] and acknowledged that those purposes applied to its own petition. As recognized by Florida, one purpose of the disclosure required by TIMA is to ensure that the form of the odometer disclosure precludes odometer fraud. Florida asserted that the proposed secure reassignment form would have the same security features currently included on paper title and would travel with the title record in FRVIS, and that both parties would be present together in a tag agency with identification in order to process the title transfer, which would include execution of the odometer disclosure statement on the secure reassignment form.

A second purpose of TIMA, as stated by Florida, is to prevent odometer fraud by processes and mechanisms making the disclosure of an odometer's mileage on the title both a condition of the application for a title and a requirement for title issuance by a State. Florida stated that under its proposal, odometer disclosure would remain a required data input for application of a title and a required output on the title. By having both parties present with required identification, Florida stated the process would be more secure than the current process, which allows the owner to sign the title over to the buyer who then produces the document when obtaining title without the seller present.

A third purpose, cited by Florida, is to prevent alterations of disclosures on title and to preclude counterfeit titles through secure processes. Florida stated in its petition that, with both parties present at a tag agency with identification, this process would prevent alterations and preclude counterfeit titles. If changes are necessary, a new secure document is signed by both parties present in front of an authorized tag agent.

A fourth purpose, acknowledged by Florida, is to create a record of the mileage on vehicles and a paper trail. Florida stated that under its proposal, the secure document, whether a secure reassignment form or secure paper title, signed by both the buyer and seller would be scanned and stored as evidence of the agreement by both the buyer and seller of the odometer reading. This would create a permanent record easily checked by subsequent owners or law enforcement officials.

Florida noted that a fifth purpose is to protect consumers by ensuring that they receive valid representations of the vehicle's actual mileage at the time of transfer based on odometer disclosures. Under its proposal, Florida stated this purpose would be served, because consumers (buyers) would be present with sellers at the time the title is transferred (currently this is not usually the case).

b. Sales Involving Licensed Dealers (With and Without a Lien)

In its petition (as supplemented), Florida cited the statutory purposes of TIMA as amended, stated in NHTSA's prior final determinations granting petitions for alternate odometer disclosure requirements, and applied

[16] The secure reassignment form contains an odometer disclosure statement that is required to transfer the vehicle title. Sellers would accurately disclose vehicle mileage in the presence of both the buyer as well as a tag agent. The tag agent will verify that the buyer agrees to the mileage being disclosed and will require proper identification from both the buyer and the seller. (Currently, a vehicle owner with an e-title who wants to transfer or sell the vehicle must acquire a paper title from the State to process the transaction.)

[17] Any statements which refer to ''the purposes of TIMA'' or ''a ''purpose of TIMA'' should be interpreted to refer to ''the purpose of the disclosure required by subsection (d) or (e), as the case may be,'' as stated in Section 408 of the Cost Savings Act, as amended by TIMA.

those purposes to its own petition. As recognized by Florida, one purpose of TIMA as amended is to ensure that the form of the odometer disclosure precludes odometer fraud. Florida stated its proposal would meet this purpose because the secure reassignment form would have the same security features currently included on paper title. The dealer would use secure reassignment forms, which would travel with the title, which the dealer would sign with the previous owner and with the new buyer.

A second purpose, as stated by Florida, is to prevent odometer fraud by processes and mechanisms making the disclosure of an odometer's mileage on the title a condition of the application for a title and a requirement for the title issued by the State. Florida stated that the e-title process requires disclosure of an odometer's mileage on a secure document. The secure reassignment forms would have the same security features currently included on a paper title and would travel with the title record.

A third purpose listed by Florida is to prevent alterations of disclosures on a title and to preclude counterfeit titles through secure processes. Florida stated that a title would not be issued to a buyer if the chain of ownership could not be established. The submission of all secure reassignment forms would establish the chain of ownership. Odometer disclosures would be part of those forms.

A fourth purpose acknowledged by Florida is to create a record of the mileage on vehicles and a paper trail. Florida noted that the secure reassignment document signed by the previous owner, the dealer, and the buyer would be scanned and stored as evidence of the agreement by both the buyer and seller of the odometer reading.

Florida noted that a fifth purpose is to protect consumers by ensuring that they receive valid representations of the vehicle's actual mileage at the time of transfer based on odometer disclosures. According to Florida, the secure reassignment forms would allow for valid representation of the odometer mileage during both transactions (the original owner to dealer transaction and the subsequent dealer to buyer transaction).

2. Transfers Involving Leased Vehicles

Florida recognized, with regard to leased vehicles that one purpose of TIMA as amended is to ensure that lessors have the vehicle's actual odometer mileage at the time of transfer. Florida stated that the only change proposed by its e-title proposal from the current process is that, instead of signing an actual paper title, the lessor would sign a power of attorney and disclose the odometer reading as provided to it by the lessee. This power of attorney would then transfer this odometer information to the dealer to sell the vehicle.

A second purpose as stated by Florida is to ensure that lessees provide lessors with an odometer disclosure statement. Florida stated that its proposed e-title process would not affect this requirement.

A third purpose listed by Florida is to ensure that lessees are formally notified of their odometer disclosure obligations and the penalties for failing to comply by not providing complete and truthful information. Florida stated that its proposed e-title process would not affect this requirement.

A fourth purpose acknowledged by Florida is to set rules for accurate disclosure by lessors, directing them to indicate on the title the mileage provided by the lessee, unless the lessor has reason to believe that the disclosure by the lessee does not reflect the actual mileage of the vehicle. Florida stated that its proposal would satisfy this purpose by allowing the lessor to indicate the mileage on a secure reassignment form that would travel with the title.

Florida noted that a fifth purpose is to create records and a paper trail, including the written, dated and signed odometer disclosure statement by the lessee. Florida stated that its proposal would not change this requirement. The title would remain in electronic form; however, the secure reassignment form with the lessor's odometer disclosure, the power of attorney form and bill of sale would all be scanned into the title history. The Department's database would store these documents with the title.

IV. NHTSA's Initial Determination

In its initial determination, NHTSA restated the statutory purposes of the disclosure required by TIMA as amended. 76 FR 48103–48107. NHTSA then discussed Florida's petition (*Id.* at 48107–48111) and analyzed whether it was consistent with the statutory purposes (*Id.* at 48111–48115). NHTSA preliminarily granted Florida's petition for proposed alternate disclosure requirements as to vehicle transfers involving casual or private sales, and preliminarily denied the petition as to sales involving licensed dealers and leased vehicles. *Id.* at 48115.

NHTSA explained that Florida's proposal as to sales involving licensed dealers was problematic because of Florida's proposed use of reassignment forms instead of a title as the document on which odometer mileage would be disclosed. *Id.* at 48112–48113. Disclosing mileage on a reassignment form rather than title is inconsistent with the statutory purposes of (a) Ensuring that the form of disclosure precludes odometer fraud; (b) preventing odometer fraud by processes and mechanisms making odometer mileage disclosures on the title a condition for the application for a title, and a requirement for the title issued by a State; (c) creating a record of vehicle mileage and a paper trail; and (d) protecting consumers by ensuring that they receive valid odometer disclosures representing a vehicle's actual mileage at the time of transfer. *Id.* at 48112–48113; 48115. Florida's proposal to have odometer mileage disclosed on a reassignment form rather than title disposes of a critical aspect of TIMA (namely, mileage disclosures on title) intended to provide a mechanism to trace and prosecute odometer tampering, and to prevent odometer fraud. *Id.* at 48112–48113.

NHTSA also explained that Florida's proposal involving use of powers of attorney in sales of leased vehicles (among other things) was problematic in light of the purposes of TIMA as amended in 1988. *Id.* at 48113–48115. One purpose of the amendments to TIMA on powers of attorney was to provide a limited exception to a rule prohibiting a person from signing an odometer disclosure statement as both the transferor and transferee in the same transaction. The rule was intended to preclude situations, rife with potential fraud, where the same person signed as the reporter and verifier of the odometer reading. A consequence was that powers of attorney could be used to make mileage disclosures. *Id.* at 48114. This presented problems when vehicles that were subject to a lien were traded-in, because the seller did not have the title (the lienholder had the title or controlled it) upon which to make the odometer disclosure. TIMA was amended to permit power of attorney to be used in a limited situation—where a vehicle's title was unavailable because it was ''physically held by a lienholder.'' Sec. 401, Pub. L. 100–561, 102 Stat. 2817. When it enacted regulations governing powers of attorney, NHTSA considered whether power of attorney could be used to disclose mileage in situations where title was unavailable because it was lost, as indicated in the

legislative history,[18] and decided affirmatively.

Although a lessor would have the title, Florida proposes allowing power of attorney to be used as part of a disclosure process involving a number of steps and transfers, requiring the use of at least three separate documents, instead of the title, to disclose odometer mileage.[19] 76 FR 48109. Florida's proposal makes use of multiple forms, which can be lost or fraudulently replaced before being scanned into FRVIS. *Id.* As stated in the initial determination, Florida's proposal was not consistent with the purposes of the disclosure required by TIMA, as amended. *Id.* at 48113–48115. NHTSA stated that Florida's proposal was inconsistent with the purpose of preventing alterations on odometer disclosures by powers of attorney and precluding counterfeit powers of attorney through secure processes and protecting consumers by ensuring that they receive valid representations of a vehicle's actual mileage at a time of transfer. 76 FR 48114–48115. NHTSA explained that Florida's proposed alternate disclosure requirements for sales of leased vehicles were also inconsistent with the statutory purposes relevant to leased vehicles to (a) ensure that lessees are formally notified of their odometer disclosure obligations and the penalties for failing to comply by not providing complete and truthful information on the disclosure to the lessor; (b) set ground rules for the lessors, providing for lessors to indicate the mileage provided by the lessee on the title, unless the lessor has reason to believe that the disclosure by the lessee does not reflect the actual mileage of the vehicle; and (c) create records and a paper trail. *Id.* at 48112–48115.

V. Summary of Public Comments

NHTSA received two comments. The first was from the Florida Division of Motorist Services (Florida).[20] In general, Florida comments that federal laws should be reviewed and amended to allow for further variances in processes and mechanisms through which vehicles are titled. The second comment was from the National Auto Auction Association (NAAA).[21] NAAA generally remarks that Florida's proposed alternate disclosure requirements are no less secure than Florida's current odometer disclosure requirements.

A. Florida's Comment

Florida seeks to employ new electronic technology. Florida recognizes that its proposal varied significantly from previous petitions. Unlike the other States that have petitioned NHTSA, Florida requested variances from Federal requirements with regard to dealer and lease transactions. Florida states that the ''intent of Federal odometer laws is to ensure the buyer of a motor vehicle knows the true mileage of the vehicle'' and that ''[w]hile the intent of the federal laws remains necessary, the processes and mechanisms by which motor vehicles are sold continue to change with new technology.'' It adds that federal laws regarding odometer disclosure have not been amended in years and that when these laws were enacted, many States did not have electronic alternatives to titling. Florida recommends that ''federal laws be reviewed and amended to allow for further variances to enable states to use new systems and technology to enhance titling processes in their state.'' Finally, Florida contends in a sweeping manner that ''its alternative requirements are consistent with the purpose of the disclosure and should be granted in their entirety.''

Florida agrees with NHTSA's initial determination to approve Florida's proposal for casual or private sales.

With regard to its petition on sales involving licensed dealers without a lien, Florida requests use of secure reassignment forms in lieu of paper titles. Florida then requests a ''variance in a case where there is no lien on the vehicle and title is held electronically.'' Florida comments on NHTSA's initial determination, which states, ''if, however, the transfer from the titled seller to a dealer was on a title, NHTSA's initial decision would be that Florida's proposal insofar as it concerns subsequent transfers of the vehicle among licensed Florida dealers meets the purposes of TIMA.'' 76 FR 48112 n. 48. Florida responds, ''our petition is to allow Florida to enhance its electronic titling initiative by not requiring an owner to convert an electronic title to paper to transfer the vehicle. By requiring a paper title in all instances, we would not need to seek a petition for variance from the odometer requirements.'' Florida suggests that ''electronic title be looked at similarly to one that is held by a lienholder, which federal law currently allows the use of secure power of attorney to disclose the odometer reading.'' Florida requests that NHTSA reconsider its position and allow Florida to use a secure reassignment form for the initial transfer from the seller to the dealer when there is an electronic title, and contends that the intent of the disclosure requirements would be met.

Florida observes that previous petitions by other States for approval of odometer disclosure requirements did not involve a review of disclosure requirements for leased vehicles. Florida also recognizes that federal laws allow the use of powers of attorney to disclose odometer readings only where the owner does not have the title: when the title is held by a lienholder, or when title is lost. Florida contends that a lessor acts in a similar manner to a lienholder in an e-title scenario in Florida, because in both instances, the person with the title is not the person who physically has possession of the vehicle. Florida's proposal seeks to avoid the current procedure in Florida of requiring a lessor to go to a tag agent and have the e-title printed before delivering a vehicle to the dealer. Florida proposes that a lessor disclose the odometer reading on a secure power of attorney, avoiding the step of printing an e-title to paper. Florida requests that NHTSA reconsider its position, and allow Florida to use a power of attorney in leased vehicle transactions.

B. The National Auto Auction Association's Comment

NAAA represents hundreds of auto auctions. NAAA supports electronic titling, which is a state function. NAAA fully supports Florida's petition, stating that ''electronic titling is the wave of the future, and odometer disclosure laws must change to keep pace with electronic titling laws.'' NAAA asserts that ''the burden [is] on NHTSA to find that the proposed alternate disclosure requirements do not comply with the law.'' NAAA recognizes that NHTSA raises legitimate concerns regarding the use of secure reassignment forms and powers of attorney that do not accompany the paper title document itself. However, NAAA believes that

[18] 49 CFR 580.13; 134 Cong. Rec. 30088 (1988). House Representative John Dingell of Michigan stated, ''* * * I want to observe that some have suggested that the amendment also cover lost titles * * * the present law allows the National Highway Traffic Safety Administration to, by rule, deal with this problem before next February.''

[19] A lessee would disclose mileage on an unspecified ''Odometer Disclosure Statement'' (presumably given to the lessor), then the lessor would sign a secure power of attorney to a dealer including odometer disclosure, and then the dealer would sign a secure reassignment document agreeing with the odometer disclosure. 76 FR 48113–48114.

[20] Letter from Sandra C. Lambert, Director, Florida Division of Motorist Services, to O. Kevin Vincent, Chief Counsel, National Highway Traffic Safety Administration (''Florida's Comment'') (Sept. 7, 2011).

[21] Letter from Bertha M. Phelps, Legislative and Government Relations Committee, National Auto Auction Association, to O. Kevin Vincent, Chief Counsel, National Highway Traffic Safety Administration (''NAAA's Comment'') (Sept. 7, 2011).

Florida has a very strong argument in that it would make no sense to require the printing of a paper title because the paper title would be less secure than the electronically stored title.

For dealer sales, NAAA recognizes the concern that Florida would provide for the issuance of a new title based only on reassignment forms. NAAA points out that Florida's proposal is no less secure than Florida's current procedures. In its comment, NAAA did not dispute that in some respects Florida's current practice does not comport with Federal odometer statutes, and associated regulations. *See* 76 FR 48115. NAAA states that reassignment forms have always been considered an extension of and part of the title itself, and having the paper title accompany the reassignment form would make it no less likely for fraud to occur. Further, NAAA asserts that criminals can discard and create another secure reassignment form just as easily as they can with paper title, and that criminals can alter titles to match reassignment forms.

Second, as to lease sales, NAAA states that NHTSA points out, correctly, that under current law, powers of attorney can be used only when the transferor's title is physically held by a lienholder or the title is lost. NAAA argues that NHTSA's position of strict construction of the law appears not to comply with the Congressional mandate that NHTSA approve alternate disclosure requirements unless NHTSA determines they are not consistent with TIMA's disclosure requirements. NAAA states that if the power of attorney can be used when a title is in the physical possession of a lienholder or lost, powers of attorney should be allowed when titles are securely in the possession of a state titling agency as a result of being held intact in a secure electronic environment, inaccessible to criminals who might want to alter it.

In conclusion, NAAA states that it ''in no way thinks NHTSA has acted arbitrarily.'' NAAA further states that as the motor vehicle industry moves to electronic titling as a norm, states have the opportunity to create odometer disclosure systems more effective and secure than those currently in place. NAAA believes that NHTSA should approve such systems. NAAA states that it in all honesty, could argue either NHTSA's position or Florida's position in a debate and that it hopes that NHTSA obtains specific Congressional authority for rulemaking to accommodate electronic titling procedures.

VI. Statutory Purposes

The Cost Savings Act, as amended by TIMA in 1986, contains a specific provision on approval of State alternative odometer disclosure programs. Subsection 408(f)(2) of the Cost Savings Act (now recodified at 49 U.S.C. 32705(d)) provides that NHTSA shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless NHTSA determines that such requirements are not consistent with the purpose of the disclosure required by subsection (d) or (e) as the case may be. (Subsections 408(d), (e) of the Costs Savings Act, which were amended by TIMA and subsequently amended, were recodified to 49 U.S.C. 32705(b) and (c)). In light of this provision, an important question is what are the purpose(s) of the disclosure required by section 408(d), and (e) of the Cost Savings Act as amended. We now discuss the purposes of TIMA as amended, as germane to Florida's petition.

In its petition, as supplemented on October 5, 2010, Florida restated and applied the purposes of TIMA as previously articulated by NHTSA. NHTSA's initial determination set forth the purpose(s) of the disclosure required by section 408(d) of the Cost Savings Act as amended. 76 FR 48104–48107. NHTSA also provided a full opportunity for comment. NHTSA received two comments: one from Florida, and one from NAAA.

A. Consideration of Florida's and NAAA's Comments

Neither Florida's nor NAAA's comments dispute the relevant Cost Savings Act purposes set forth in the initial determination. However, Florida asserts in its comment that the processes and mechanisms by which motor vehicles are sold continue to change with new technology and that federal laws should be reviewed and amended to allow for further variances to enable states to use new systems and technology to enhance titling processes in their state. NAAA comments that the burden is on NHTSA to find that the proposed alternate disclosure requirements do not comply with the law. NAAA also urges NHTSA to consider that Florida's proposal is more secure than its current system. These aspects of Florida's and NAAA's comments are addressed below.

1. Florida's Position on the Statutory Purposes

In its supplement to its petition, Florida referred to and applied the purposes of TIMA as previously articulated by NHTSA. Florida has not renounced this acceptance of NHTSA's articulation of TIMA's purposes. In its comment on the agency's initial determination, Florida does not challenge NHTSA's analysis of statutory purposes of TIMA as amended, but it requests a variance to accommodate changes in technology. Florida's comments state generally that federal laws should be reviewed and amended to allow for variances in processes and mechanisms through which vehicles are titled. This is not within NHTSA's authority. NHTSA cannot grant a variance because the statute does not provide for variances.

2. NAAA's Position on the Statutory Purposes

NAAA's comments also do not directly challenge NHTSA's analysis of statutory purposes in the initial determination. Rather, NAAA appears to suggest that NHTSA should compare Florida's proposed odometer disclosure system to its current system rather than determining if the proposal is consistent with the applicable statutory purposes.

First, NAAA asserts that Florida's proposal as to sales by licensed motor vehicle dealers and transfers involving leased vehicles should be adopted because it is more secure than Florida's current titling system. However, this general standard is not articulated in TIMA or any of the subsequent amendments. NHTSA's authority to approve alternate vehicle mileage disclosure requirements is based on consistency with the purpose of the disclosure required by subsection[s] [of section 408] as the case may be. Whether or not Florida's current program is less secure than its proposed program, to approve Florida's program for alternate vehicle mileage disclosure requirements, NHTSA must evaluate the program in the framework of the purposes of TIMA as amended (recodified to 49 U.S.C. 32705(b), (c)). NAAA then comments that ''the burden [is] on NHTSA to find that proposed alternate disclosure requirements do not comply with the law.'' NHTSA's burden is to examine the Florida proposal in light of the purposes of TIMA as amended.

B. Adoption of the Statutory Purposes Set Forth in the Initial Determination

After careful consideration of the comments, as part of the agency's final determination, we adopt the purposes stated in our initial determination of Florida's petition. 76 FR 48103–48107.

1. TIMA's Purposes Regarding Vehicle Transfers in the Absence of a Lease Agreement

As to vehicle transfers in the absence of a lease agreement, the statutory purposes of the disclosure required by TIMA and its amendments are in short [22] as follows: (1) To ensure that the form of the odometer disclosure precludes odometer fraud; (2) to prevent odometer fraud by processes and mechanisms making odometer mileage disclosures on the title a condition of any application for a title, and a requirement for any title issued by a State; (3) to prevent alterations of disclosures on titles and to preclude counterfeit titles through secure processes; (4) to create a record of vehicle mileage and a paper trail; and (5) to protect consumers by ensuring that they receive valid representations of the vehicle's actual mileage at the time of transfer based on odometer disclosures. 76 FR 48104.

2. TIMA's Purposes Relevant to Leased Vehicles

As to leased vehicle transfers, the statutory purposes are: (1) To ensure that lessors have the vehicle's actual odometer mileage at the time of transfer; (2) to ensure that lessees provide lessors with an odometer disclosure statement; (3) to ensure that lessees are formally notified of their odometer disclosure obligations and the penalties for failing to comply by not providing complete and truthful information; (4) to set the ground rules for the lessors, providing for lessors to indicate the mileage provided by the lessee on the title, unless the lessor has reason to believe that the disclosure by the lessee does not reflect the actual mileage of the vehicle; (5) to create records and a paper trail; and (6) to ensure that there are valid representations of the vehicle's actual mileage at the time of transfer. 76 FR 48104.

3. The Purposes of TIMA as Amended Relevant to Power of Attorney

The statutory purposes of the disclosure required by TIMA and its amendments regarding power of attorney are: (1) To provide limited exception(s) to a rule prohibiting a person from signing an odometer disclosure statement as both the transferor and transferee in the same transaction, which had the effect of prohibiting the use of powers of attorney for purposes of recording mileage on titles of motor vehicles; (2) to ensure that the form of the power of attorney document issued by a State precludes odometer fraud; (3) to set ground rules for transferors and transferees, providing that both parties provide all of the information and signatures required in parts A, and as applicable B, and C of the secure power of attorney form; (4) to prevent odometer fraud by establishing processes, mechanisms and conditions calculated to result in the disclosure of the actual mileage on the title; (5) to prevent alterations on odometer disclosures by powers of attorney and to preclude counterfeit powers of attorney through secure processes; (6) to create a record of the mileage on vehicles and a paper trail; and (7) to protect consumers by ensuring that they receive valid representations of a vehicle's actual mileage at a time of transfer. *See* 76 FR 48104–48107.

[22] *See* 76 FR 48104.

VII. NHTSA's Final Determination

Section 408(f)(2) of the Cost Savings Act sets forth the legal standard for approval of state alternate vehicle mileage disclosure requirements: NHTSA ''shall'' approve alternate motor vehicle mileage disclosure requirements submitted by a State unless NHTSA determines that such requirements are not consistent with the purpose of the disclosure required by subsection (d) or (e) of section 408, as the case may be. In this section, NHTSA will consider Florida's program in light of the purposes of the disclosure required by subsection (d) of section 408, and address Florida's and NAAA's comments.

A. Casual or Private Sales

NHTSA preliminarily granted Florida's petition regarding proposed alternate disclosure requirements for vehicle transfers involving casual or private sales. 76 FR 48111–48112. Both Florida and NAAA supported this initial determination. NHTSA grants Florida's proposed alternate disclosure requirements for vehicle transfers involving casual or private sales.[23]

Florida's proposed alternate disclosure requirements as to casual or private sales meet the purposes of the disclosure required by TIMA and its amendments. Under Florida's program there would be an e-title.[24]

First, Florida's program for casual or private sales ensures that the form of the odometer disclosure precludes odometer fraud. A required part of the date to be entered in the transfer of title would be the vehicle's odometer reading. Florida's program requires the buyer and seller to visit a tag office together, provide identification to a tag agent, and sign a single document referred to as a secure reassignment form [25] before the tag agent transferring ownership and disclosing the odometer reading. This document is stored on Florida's electronic database and linked to the vehicle's title through title number and VIN.

Second, the processes and mechanisms noted above make the disclosure of odometer mileage on one document, an information entry form, before a tag agent a condition of the application for a title and a requirement for title issuance.

Third, this portion of the Florida proposal employed secure processes that prevent alterations of disclosures on titles and preclude counterfeit titles. Specifically, odometer mileage is disclosed initially on secure paper (either on the paper title itself or on a secure form which complies with 49 CFR 580.4) in the presence of a tag agent.

Fourth, Florida's proposal would create a record of the mileage on vehicles and a paper trail. Namely, Florida requires both the buyer and seller to sign a secure document in the presence of a tag agent disclosing odometer mileage. Then, Florida has all documents scanned and stored in FRVIS. This creates a paper trail that can be easily checked by subsequent purchasers or law enforcement officials.

Finally, Florida's program is consistent with the overall purpose of the disclosure required by TIMA and its amendments—to protect consumers by ensuring that they receive valid odometer disclosures representing a vehicle's actual mileage at the time of transfer.

B. Sales Involving Licensed Motor Vehicle Dealers

NHTSA preliminarily denied Florida's petition regarding proposed alternate disclosure requirements for sales involving licensed dealers. *See* 76

[23] NHTSA's rationale is summarized below. For a full statement, *see* 76 FR 48111–48112.

[24] Florida notes that paper titles will still be necessary for title transactions involving at least one out of state party. For instance, if a vehicle enters Florida with an out of state title, Florida cannot recognize another state's e-title. The buyer will need to obtain a signed paper title from the seller. Conversely, if an owner sells a Florida titled vehicle to someone who will title it in another state, the owner will need to obtain the paper title to allow the buyer to obtain a title in the other state.

[25] We note that Florida's use of the term ''secure reassignment form'' in this situation appears to be a misnomer. The transfer of title in casual or private sales is not a reassignment as there is no prior assignment. The document is more accurately described as a secure State title transfer form for use when a vehicle has e-title and the title cannot be physically signed. We noted this in the initial determination and Florida did not dispute our characterization.

FR 48112–48113. Both Florida and NAAA asserted in their comments that Florida's proposal as to dealer sales is consistent with the purposes of the disclosure required by TIMA and its amendments. However, other than seeking a variance and asserting that Florida's proposal is just as secure, if not more secure than its current system (*see* Section VI), neither Florida nor NAAA provided any explanation as to how Florida's program is consistent with the purposes of the disclosure required by TIMA, beyond what had previously been provided by Florida in its petition, as supplemented.

One purpose of TIMA is to ensure that the form of the odometer disclosure precludes odometer fraud. To prevent odometer fraud facilitated by disclosure statements that were separate from titles, TIMA required mileage disclosures to be on a secure vehicle title, containing space for the seller's attested mileage disclosure and a new disclosure by the buyer when the vehicle was sold again, instead of a separate document. The form of disclosure in Florida's proposal for retail vehicle sales to dealers of vehicles without or with a lien does not satisfy this purpose. In instances when a private seller sells a vehicle to a dealer, Florida proposes that the seller and dealer complete what Florida calls a secure reassignment form to make the odometer disclosure. Florida states that the reassignment forms will travel with the title. But from a TIMA perspective, when there is a transfer involving a transferor in whose name the vehicle is titled, the transferor must disclose the mileage on a title, and not on a separate reassignment document such as one that is supposed to travel with the title.[26] Florida's proposed program is not consistent with a purpose of the disclosure required by TIMA pertaining to the form of the disclosure.

A second purpose of TIMA is to prevent odometer fraud by processes and mechanisms making odometer mileage disclosure on the title a condition for the application for a title and a requirement for the title issued by the State. As explained above, a major shortcoming of the odometer provisions of the Cost Savings Act prior to TIMA was the absence of a requirement that the odometer disclosure statement be on the vehicle's title that, following the sale of the vehicle, was presented to the State for retitling. Florida's proposed alternate disclosure requirements for vehicles transferred from a private owner to a licensed dealer do not satisfy this purpose. If the initial sale transaction to the dealer were corrected, Florida's proposed alternate disclosure requirements for subsequent vehicle transfers between licensed dealers would satisfy this purpose. Florida's proposal for sales to dealers provides for disclosure and acceptance of odometer information on a secure reassignment form; not on a title. Following the ultimate resale of a vehicle to a consumer by a dealer (possibly not the same dealer that took the vehicle as a trade-in), that dealer would take secure reassignment forms to the tag agency for titling. Florida does not propose making the disclosure of odometer mileage on the title in the initial transaction involving a transferor in whose name the vehicle is titled a condition for the application for a title and a requirement for the title issued by the State. Florida would provide for issuance of a new title based on secure reassignment forms. Such a form can be easily discarded and another secure reassignment form bearing an inaccurate odometer disclosure could be created by an unscrupulous dealer somewhere in the chain of transfers. In order for the proposed program to be consistent with a purpose of TIMA, in the first transfer of title of a vehicle from a private seller to a dealer Florida may not provide for a mileage disclosure on a secure reassignment form.

A third purpose of TIMA is to prevent alterations of disclosures on titles and to preclude counterfeit titles through secure processes. In view of the shortcomings of Florida's proposed program regarding the use of secure reassignment forms instead of titles in sales between private parties and dealers discussed above, NHTSA stated in its initial determination that it was inappropriate to reach a conclusion regarding the security aspects of those forms in that context. 76 FR 48112. Florida did not provide any additional information on secure processes in its comment. Therefore, NHTSA declines to reach a conclusion on this issue.

A fourth purpose of TIMA is to create a record of the mileage on vehicles and a paper trail. The underlying purposes of this record and paper trail are to inform consumers and provide a mechanism to trace and prosecute odometer tampering. Florida's proposed alternative scheme would not, in one critical respect, create a scheme of records equivalent to the current ''paper trail'' used for identifying and prosecuting odometer fraud. Florida proposes widespread use of secure reassignment forms in transfers from private parties to dealers. In particular, Florida proposes that, instead of a title, a reassignment form would be used to create the record of the mileage on the odometer in the case of a transferor in whose name the vehicle is titled. In these circumstances, use of reassignment documents would not create the records and paper trail consistent with the purposes of TIMA.

The remainder of Florida's proposal on sales involving licensed motor vehicle dealers would otherwise meet the record creation purposes of TIMA. Regardless of whether the buyer requests a paper title or surrenders the title to the Department to maintain electronically, the Department would retain an electronic copy of the prior titles (including the prior odometer disclosure statements) and any supporting documentation, including secure reassignment forms and powers of attorney. The Department would scan these documents and store them in FRVIS with the vehicle's electronic title history. For title images, FRVIS would store all applicable data and images of documents that would remain in the title history for the vehicle. Furthermore, Florida requires that all documents used to issue a title be retained for a period of at least ten (10) years. These electronic records would create the electronic equivalent of a paper based system that would be readily available to law enforcement. Additionally, the vehicle mileage would be available for public view via an online motor vehicle check available to Florida customers.

TIMA's overall purpose is to protect consumers by ensuring that they receive valid odometer disclosures representing a vehicle's actual mileage at the time of transfer. Because Florida's proposed program relies on reassignment documents, which change hands before being scanned into FRVIS, and cannot be authenticated by the tag agent, it does not satisfy this purpose.

After careful consideration of the comments, the Agency concludes that Florida's proposed program on sales involving licensed motor vehicle dealers does not meet the purposes of the disclosure required by TIMA and its amendments.

[26] Virginia, Texas, and Wisconsin sought to allow dealers to use electronic titling systems. 74 FR 646; 75 FR 20928; 76 FR 1371. NHTSA approved the petitions of Virginia, Texas, and Wisconsin for approval of alternate odometer mileage disclosure requirements. However, these states did not use reassignment forms in the manner proposed by Florida. Instead, these states provided for direct electronic recordation of an odometer reading in the e-title system by a transferor. 74 FR 649; 75 FR 20929; 76 FR 1374. Virginia, Texas, and Wisconsin also required the identity of all individuals accessing the e-title system to be validated and authenticated, and used unique electronic signatures to verify the identities of individuals who accessed the e-title system. 74 FR 646; 75 FR 20929; 76 FR 1374.

C. Sales Involving Leased Vehicles

NHTSA's initial determination preliminarily denied Florida's petition regarding proposed alternate disclosure requirements for sales of leased vehicles. In their comments, Florida and NAAA asserted that Florida's proposal as to the sale of leased vehicles was consistent with the purposes of the disclosure required by TIMA and its amendments. But neither Florida nor NAAA provided support as to how or why Florida's proposal was consistent with the statutory purposes beyond what was stated in Florida's petition as supplemented.

Analysis of Florida's proposed alternate vehicle mileage disclosure requirements for sales involving leased vehicles involves consideration of the purposes of the disclosure required by the leased vehicle provisions of TIMA and its amendments, as well as power of attorney provisions of TIMA and its amendments.[27]

1. Florida's Proposal in Relation to the Purposes of the Disclosure Required by the Leased Vehicle Provisions of TIMA and Its Amendments

One purpose of TIMA's leased vehicle provisions is to ensure that the lessor has the vehicle's actual odometer mileage when it transfers ownership. Florida's proposal satisfies this purpose. In our initial determination, we stated our understanding, which Florida did not dispute in its comments, that under the state's proposal, lessees will be required to sign an odometer disclosure statement that will be provided to the lessor. We adhere to that understanding. 76 FR 48113.

A second purpose of TIMA's leased vehicle provisions is to ensure that the lessee provides the lessor with an odometer disclosure statement regarding the mileage of the vehicle at the time of transfer. Florida's proposal satisfies this purpose. As discussed above, the lessee would provide this via an odometer disclosure statement to the lessor when surrendering the leased vehicle to the dealer, and the dealer would provide this statement to the buyer.

A third purpose is to ensure that lessees are formally notified of their odometer disclosure obligations and the penalties for failing to comply by not providing complete and truthful information. Florida's proposal does not satisfy this purpose. We note that Florida did not address this purpose in its petition other than a statement that the e-title process does not change the current requirement. We recognize that Fla. Stat. Ann. § 319.225(4) requires lessors to conform to Federal disclosure regulations under 49 CFR 580.7. In addition, Fla. Stat. Ann. § 319.225(9) provides that State statutes regarding vehicle transfer and reassignment forms and odometer disclosure statements be construed to conform to 49 CFR Part 580. According to Florida, the requirement that the lessee provide the lessor with an odometer disclosure statement when the lessee surrenders the vehicle typically is part of the lease agreement, which provides notice of the requirement and the penalties for failing to comply. But this is not a formal requirement. Underlying the adoption of the leased vehicles provisions of TIMA was significant concern about considerable understatements of mileage on leased vehicles that were turned in and resold. And in its comments on the initial determination, Florida did not suggest that it was a formal requirement. Reliance on what is typically in a lease is not sufficient to ensure that lessees are formally notified of their odometer disclosure obligations and the penalties for failing to comply by not providing complete and truthful information.

A fourth purpose of TIMA's disclosure requirements is to set the ground rules for the lessors, providing for lessors to indicate the mileage provided by the lessee on the title, unless the lessor has reason to believe that the disclosure by the lessee does not reflect the actual mileage of the vehicle. Florida's proposal does not satisfy this purpose. Under Florida's proposal, a lessee would make an odometer disclosure by executing an odometer disclosure statement upon relinquishing the leased vehicle. The lessor would transfer the odometer disclosure from the lessee's statement to a power of attorney unless the lessor had reason to believe that the lessee's statement did not reflect the vehicle's actual mileage, in which case the lessor would be required to indicate on the title ''true mileage unknown'' or words to that effect. As Florida and NAAA acknowledged, odometer disclosure using a power of attorney is permissible only in the limited circumstances when the transferor's title is physically held by a lienholder at the time of the transfer, or when title has been lost. This stems from the 1988 amendments to TIMA. These circumstances do not include lessors giving power of attorney to dealers for purposes of odometer disclosure. Under Florida's proposal, the vehicle title is not unavailable to the lessor.

A fifth purpose of TIMA's leased vehicle provisions is to create records and a paper trail. The paper trail includes the signed odometer disclosure statement by the lessee. Florida's proposed alternate disclosure requirements do not satisfy this purpose. Florida's proposed program for leased vehicle transactions would not create a scheme of records equivalent to the current ''paper trail'' now assisting consumers and law enforcement. The lessee would sign an odometer disclosure statement when surrendering the vehicle, but the lessor would not be required to sign this document. Instead, the lessor would execute a power of attorney form. Also, under TIMA as implemented, dealers and lessors are required to retain all odometer disclosure statements that they issue and receive. However, Florida's proposed program does not specify that the dealer and lessor are required to maintain a copy of the lessee's odometer disclosure statement, and does not provide an alternative mechanism such as a provision that the statement will be forwarded to either a tag agent for mileage verification or the Department for scanning and maintaining as part of the vehicle's title history. Florida did not correct this in its comments. Florida's proposal as to the sale of leased vehicles does not satisfy the purposes of TIMA, because it does not require dealers and lessors to retain odometer disclosure statements from lessees.

The overall purpose of TIMA's leased vehicle provisions is to ensure that vehicles subject to leases have adequate odometer disclosure statements executed on titles at the time of transfer. Florida's proposed program does not meet TIMA's overall purpose. Under Florida's proposal, upon the termination of a lease, a lessee would sign an odometer disclosure statement. But Florida would not have the lessor sign this document. Instead, the lessor would sign a separate power of attorney document. The lessor's granting a power of attorney to a dealer for purposes of odometer disclosure allows the same person to sign an odometer disclosure for both parties. This creates an opportunity for fraud, and Congress did

[27] The Virginia and Texas petitions for approval of alternate odometer mileage disclosure requirements did not cover leased vehicle sales. 74 FR 643; 75 FR 20925. The Wisconsin petition for approval of alternate odometer mileage disclosure requirements discussed an incomplete plan for transactions involving leased vehicles which was still under development, but NHTSA did not approve Wisconsin's plan insofar as it concerned leased vehicles, as Wisconsin indicated that it would submit a separate petition addressing leased vehicle transfers. 76 FR 1374. In addition, because the Virginia, Texas, and Wisconsin petitions did not propose expanding the use of power of attorney or even involve the use of power of attorney, NHTSA did not address the statutory purposes of the power of attorney provisions in its final determinations for those states. 74 FR 643; 75 FR 20925; 76 FR 1367.

not extend the use of power of attorney to this circumstance. Further, Florida's proposal [28] does not require the odometer disclosure statement made by the lessee to be co-signed by the lessor, to be submitted with title documents, or to be retained by any party. In the Agency's view, this is an important link in the chain of odometer disclosure for a leased vehicle to ensure valid odometer disclosures.

2. Florida's Proposal in Relation to the Purposes of the Disclosure Required by the Power of Attorney Provisions of TIMA and Its Amendments

The first purpose of the power of attorney provision in TIMA as amended was to provide limited exception(s) to a rule prohibiting a person from signing an odometer disclosure statement as both the transferor and transferee in the same transaction, which had the effect of prohibiting the use of powers of attorney for purposes of recording mileage on titles of motor vehicles. Florida's proposal does not fit within the confines of the exceptions identified by Congress and NHTSA and does not meet this purpose of TIMA as amended. Under Florida's proposed program, a lessor (not a lienholder) would execute a power of attorney. No lienholder would be involved nor is there a requirement that the title be lost. More importantly, overall purposes of TIMA as amended are not preserved by Florida's proposed expansion of power of attorney usage. Florida seeks to use power of attorney as part of a mileage disclosure process which would use at least three separate documents to disclose mileage: an Odometer Disclosure Statement by a lessee (the form of which is unspecified), a power of attorney form, and a secure reassignment form. Florida has presented no measure of control over these documents, which can be fraudulently replaced prior to recordation in Florida's e-title system.

In the initial determination, NHTSA did not make a determination as to whether Florida's proposal met the second, third, fourth, and sixth purposes of the discourse required by TIMA. 76 FR 48114–48115. Florida's comments did not provide any additional justification as to how its program was consistent with these purposes of TIMA. Accordingly, NHTSA declines to make a final determination as to whether Florida's proposal meets these purposes.

The fifth purpose is to prevent alterations of odometer disclosures by powers of attorney and to preclude counterfeit powers of attorney through secure processes. Florida's proposal does not satisfy this purpose. Under NHTSA's regulations, power of attorney forms shall be issued by the State and shall be set forth by a secure process. 49 CFR 580.13(a). Under Florida's proposal, the power of attorney document used by the lessor would not be State-issued and would not be secure. As noted above, TIMA was written in part to prevent alterations of disclosures on titles and preclude counterfeit titles by requiring secure processes. In furtherance of these purposes, paper titles must be produced using a secure printing process or there must be some ''other secure process.'' Allowing lessors to transfer title and make the required disclosure through a non-secure power of attorney is inconsistent with the purpose of the odometer disclosure requirements. Accordingly, Florida's proposed program does not meet this purpose. A power of attorney form—and any document used to reassign a vehicle title—must be issued by the State and produced by a secure process.

Finally, the overall purpose of the disclosure required by TIMA is to protect consumers by ensuring that they receive valid representations of a vehicle's actual mileage at a time of transfer. Florida's proposal is not consistent with this purpose.

Upon careful consideration of the comments, NHTSA adopts the analysis set forth in its initial determination, and denies Florida's proposed alternate disclosure requirements for transfers involving leased vehicles.

D. Conclusion

For the foregoing reasons, and upon review of the entire record, NHTSA hereby issues a final determination granting Florida's petition for requirements that apply in lieu of the federal requirements adopted under section 408(d) of the Cost Savings Act as to vehicle transfers involving casual or private sales, and denies Florida's petition as to sales involving licensed motor vehicle dealers and leased vehicles. Other requirements of the Cost Savings Act continue to apply in Florida. NHTSA reserves the right to rescind this partial grant in the event that information acquired after this grant indicates that, in operation, Florida's alternate requirements do not satisfy one or more applicable requirements.

Authority: 49 U.S.C. 32705; delegation of authority at 49 CFR 1.50, 501.2, and 501.8.

Issued on: June 12, 2012.

David L. Strickland,

Administrator.

[FR Doc. 2012–14773 Filed 6–19–12; 8:45 am]

BILLING CODE 4910–59–P

[28] Florida's proposal provides for odometer disclosure in transfers of leased vehicles to be made on a secure reassignment form. Lessors (transferors) are titled owners in Florida. But as explained above, in the case of a transferor in whose name the vehicle is titled, the transferor must disclose the mileage on the title, and not on a reassignment document. Florida's proposal runs counter to this requirement. The dealer takes the documents (bill of sale, reassignment document, and power of attorney) to the tag agency. Then, the documents are sent to the Department and scanned into the title history.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100812345–2142–03]

RIN 0648–XC060

Snapper-Grouper Fishery of the South Atlantic; 2012 Commercial Accountability Measure and Closure for the South Atlantic Lesser Amberjack, Almaco Jack, and Banded Rudderfish Complex

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures (AMs) for the commercial sector for the lesser amberjack, almaco jack, and banded rudderfish complex in the South Atlantic for the 2012 fishing year through this temporary rule. Commercial landings for the lesser amberjack, almaco jack, and banded rudderfish complex, as estimated by the Science Research Director (SRD), are projected to reach their combined commercial annual catch limit (ACL) on July 2, 2012. Therefore, NMFS closes the commercial sector for this complex on July 2, 2012, through the remainder of the fishing year in the exclusive economic zone (EEZ) of the South Atlantic. This closure is necessary to protect the lesser amberjack, almaco jack, and banded rudderfish resources.

DATES: This rule is effective 12:01 a.m., local time, July 2, 2012, until 12:01 a.m., local time, January 1, 2013.

ADDRESSES: Electronic copies of the Comprehensive Annual Catch Limit Amendment (Comprehensive ACL Amendment) to the Fishery Management Plans (FMPs) for the Snapper-Grouper Fishery of the South Atlantic Region (Snapper-Grouper

FMP), the Golden Crab Fishery of the South Atlantic Region (Golden Crab FMP), the Dolphin and Wahoo Fishery off the Atlantic States (Dolphin and Wahoo FMP), and the Pelagic Sargassum Habitat of the South Atlantic Region (Sargassum FMP), which includes a final environmental impact statement, a regulatory flexibility analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/pdfs/Comp%20ACL%20Am%20101411%20FINAL.pdf.*

FOR FURTHER INFORMATION CONTACT: Catherine Bruger, telephone: 727–824–5305, fax: 727–824–5308, email: *Catherine.Bruger@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic, which includes the lesser amberjack, almaco jack, and banded rudderfish complex, is managed under the Snapper-Grouper FMP. The Snapper-Grouper FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

The 2006 reauthorization of the Magnuson-Stevens Act implemented new requirements that established ACLs and AMs to end overfishing and prevent overfishing from occurring. AMs are management controls to prevent ACLs from being exceeded, and to correct or mitigate overages of the ACL if they occur.

In part, the final rule for the Comprehensive ACL Amendment specified ACLs for species in the Snapper-Grouper FMP that are not undergoing overfishing, including the lesser amberjack, almaco jack, and banded rudderfish complex, and AMs if these ACLs are reached or exceeded. Implementation of ACLs and AMs for these species is intended to prevent overfishing from occurring in the future, while maintaining catch levels consistent with achieving optimum yield for the resources (77 FR 15916, March 16, 2010).

The combined commercial ACL for the lesser amberjack, almaco jack, and banded rudderfish complex, implemented through the Comprehensive ACL Amendment, is 193,999 lb (87,996 kg), round weight. In accordance with regulations at 50 CFR 622.49(b)(12)(i)(A), if the combined complex ACL is reached or projected to be reached, the Assistant Administrator, NMFS (AA) will file notification with the Office of the Federal Register to close the commercial sector for this complex for the remainder of the fishing year. Analysis of landings data from the NMFS Southeast Fisheries Science Center indicate that the commercial sector for this complex is projected to reach the ACL on July 2, 2012. Therefore, this temporary rule implements an AM to close the commercial sector for the lesser amberjack, almaco jack, and banded rudderfish complex in the South Atlantic, effective 12:01 a.m., local time July 2, 2012.

During the closure, all sale or purchase of lesser amberjack, almaco jack, and banded rudderfish is prohibited, and harvest or possession of these species in or from the South Atlantic EEZ is limited to the bag and possession limit, as specified at 50 CFR 622.39(d)(1)(viii) and (d)(2). This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal commercial permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.,* in state or Federal waters. The commercial sector for the lesser amberjack, almaco jack, and banded rudderfish complex will reopen on January 1, 2013, the beginning of the 2013 commercial fishing season.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of the lesser amberjack, almaco jack, and banded rudderfish complex, a component of the South Atlantic snapper-grouper fishery, and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.49(b)(1)(ii) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule. Such procedures are unnecessary because the AMs established by the Comprehensive ACL Amendment and located at 50 CFR 622.49(b)(12)(i)(A) have already been subject to notice and comment and authorize the AA to file a notification with the Office of the Federal Register to close the commercial sector for this complex for the remainder of the fishing year, if commercial landings for lesser amberjack, almaco jack, and banded rudderfish, combined, as estimated by the SRD, reach or are projected to reach their combined commercial ACL. All that remains is to notify the public of the closure of this complex for the remainder of the 2012 fishing year. Additionally, there is a need to immediately implement the closure for this complex for the 2012 fishing year, to prevent further commercial harvest and prevent the ACL from being exceeded, which will protect the lesser amberjack, almaco jack, and banded rudderfish resources in the South Atlantic. Also, providing prior notice and opportunity for public comment on this action would be contrary to the public interest because many of those affected by the closure need as much time as possible to adjust business plans to account for the reduced commercial fishing season.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 15, 2012.

Carrie Selberg,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–15052 Filed 6–15–12; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 119
Wednesday, June 20, 2012

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0639; Directorate Identifier 2012–NM–005–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This proposed AD was prompted by a report that the safe life limit and inspection requirements for the horizontal stabilizer trim actuator (HSTA) attachment pins and trunnions were not listed in the Airworthiness Limitations Section of the maintenance program. This proposed AD would require inspecting the trunnions and upper and lower pins for gouges, scratches, and corrosion, and replacing if necessary; and adding serial numbers and new part numbers to certain trunnions, and upper and lower pins. This proposed AD would also require revising the maintenance program to incorporate the information specified in certain temporary revisions of the limitations section. We are proposing this AD to detect and correct cracking, gouges, scratches, and corrosion of the HSTA attachment pins and trunnions, which could result in failure of these pins and trunnions and consequent disconnection of the horizontal stabilizer and subsequent loss of controllability of the airplane.

DATES: We must receive comments on this proposed AD by August 6, 2012.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0639; Directorate Identifier 2012–NM–005–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2011–45, dated December 19, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During a review of the Horizontal Stabilizer Trim Actuator (HSTA) system, it was discovered that the safe life limits and the inspection requirements for the HSTA attachment pins and trunnions were not listed in the Airworthiness Limitations Section of the Instructions for Continued Airworthiness. Also, the HSTA attachment pins and trunnions were not serialized making it impossible to keep accurate records of the life of these parts. Failure of these pins and trunnions will lead to a disconnect of the horizontal stabilizer and subsequent loss of the aeroplane.
>
> This [TCCA] Airworthiness Directive (AD) mandates the serialization of the HSTA attachment pins and trunnions.

The required actions include a detailed inspection of the trunnions and upper and lower pins for gouges, scratches, and corrosion, and replacing if necessary; and adding serial numbers and new part numbers to certain trunnions, and upper and lower pins. This proposed AD would also require revising the maintenance program to incorporate the information specified in certain temporary revisions of the limitations section. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier, Inc. has issued the following service information. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

• Bombardier Service Bulletin 601R–27–160, dated September 29, 2011.

• Bombardier Temporary Revision 2B–2180, dated August 8, 2011, to Appendix B—Airworthiness Limitations, of Part 2, Airworthiness Requirements, of the Bombardier CL–600–2B19 Maintenance Requirements Manual.

• Bombardier Temporary Revision 2B–2186, dated August 8, 2011, to Appendix B—Airworthiness Limitations, of Part 2, Airworthiness Requirements, of the Bombardier CL–600–2B19 Maintenance Requirements Manual.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 586 products of U.S. registry. We also estimate that it would take about 20 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $162 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $1,091,132, or $1,862 per product.

In addition, we estimate that any necessary follow-on actions would take about 20 work-hours and require parts costing $4,391, for a cost of $6,091 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Bombardier, Inc.: Docket No. FAA–2012–0639; Directorate Identifier 2012–NM–005–AD.

(a) Comments Due Date

We must receive comments by August 6, 2012.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, all serial numbers.

(2) This AD requires revisions to certain operator maintenance documents to include new actions (e.g., inspections) and/or Critical Design Configuration Control Limitations (CDCCLs). Compliance with these actions and/or CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (l)(1) of this AD. The request should include a description of changes to the required actions that will ensure the continued operational safety of the airplane.

(d) Subject

Air Transport Association (ATA) of America Code 27: Flight controls.

(e) Reason

This AD was prompted by a report that the safe life limit and inspection requirements for the horizontal stabilizer trim actuator (HSTA) attachment pins and trunnions were not listed in the Airworthiness Limitations Section of the maintenance program. We are issuing this AD to detect and correct cracking, gouges, scratches, and corrosion of the HSTA attachment pins and trunnions, which could result in failure of these pins and trunnions and consequent disconnection of the horizontal stabilizer and subsequent loss of controllability of the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Inspection

At the earliest of the times specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD: Do a detailed inspection of the trunnions, upper pins, and lower pins identified in table 1 of this AD, for gouges, scratches, and corrosion, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–27–160, dated September 29, 2011.

(1) Within 5,000 flight hours after the effective date of this AD.

(2) Within 60 months after the effective date of this AD.

(3) Before the accumulation of 40,000 total flight cycles, or within 60 days after the effective date of this AD, whichever occurs later.

TABLE 1—AFFECTED PARTS

Part name	Part No.
Upper Pin	600–92384–5
Upper Pin	600–92384–7
Upper Pin	601R92310–1
Lower Pin	600–92383–5
Lower Pin	600–92383–7
Lower Pin	601R92309–1
Trunnion	601R92386–1

(h) Replacement

If, during any inspection required by paragraph (g) of this AD, any gouges, scratches, or corrosion are found: Before further flight, replace the affected part with a part other than one identified in table 1 of this AD, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–27–160, dated September 29, 2011.

(i) Re-Identification

If, during any inspection required by paragraph (g) of this AD, no gouges, scratches or corrosion are found: Before further flight, add serial numbers and new part numbers to the trunnions, upper pins, and lower pins, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–27–160, dated September 29, 2011.

(j) Revise Maintenance Program

Within 30 days after the effective date of this AD, revise the maintenance program to incorporate the information specified in Bombardier Temporary Revisions 2B–2180, dated August 8, 2011; and 2B–2186, dated August 8, 2011; to Appendix B—Airworthiness Limitations, of Part 2, Airworthiness Requirements, of the Bombardier CL–600–2B19 Maintenance Requirements Manual (MRM). The compliance time for doing the initial replacement for the HSTA trunnion support and attaching hardware is before the accumulation of 80,000 landings or within 60 days after the effective date of this AD, whichever occurs later. The compliance time for doing the initial inspection of the upper and lower installation pins of the horizontal stabilizer pitch trim actuator is before the accumulation of 40,000 landings or within 60 days after the effective date of this AD, whichever occurs later.

(k) No Alternative Actions or Intervals

After accomplishing the revision required by paragraph (j) of this AD, no alternative actions (e.g., inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l)(1) of this AD.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(m) Related Information

(1) Refer to MCAI Canadian Airworthiness Directive CF–2011–45, dated December 19, 2011, and the service information specified in paragraphs (m)(1)(i), (m)(1)(ii), and (m)(1)(iii) of this AD, for related information.

(i) Bombardier Service Bulletin 601R–27–160, dated September 29, 2011.

(ii) Bombardier Temporary Revision 2B–2180, dated August 8, 2011, to Appendix B—Airworthiness Limitations, of Part 2, Airworthiness Requirements, of the Bombardier CL–600–2B19 Maintenance Requirements Manual.

(iii) Bombardier Temporary Revision 2B–2186, dated August 8, 2011, to Appendix B—Airworthiness Limitations, of Part 2, Airworthiness Requirements, of the Bombardier CL–600–2B19 Maintenance Requirements Manual.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on June 11, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–15063 Filed 6–19–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0222; Directorate Identifier 2010–NM–056–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Proposed rule; withdrawal.

SUMMARY: The FAA withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD) for certain Dassault Aviation Model FALCON 7X airplanes. The proposed AD would have required revising the maintenance program to incorporate a limitation that reduced time between overhauls, and required an initial overhaul, of the direct current (DC) generator (bearings). Since the proposed AD was issued, we have received new data that confirm the identified unsafe condition is not sufficient to warrant issuance of an AD. Accordingly, the proposed AD is withdrawn.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD action, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with a notice of proposed rulemaking (NPRM) for a new AD for certain Dassault Aviation Model FALCON 7X airplanes. That NPRM was published in the **Federal Register** on March 15, 2011 (76 FR 13924). That

NPRM would have required revising the maintenance program to incorporate a limitation that reduced time between overhauls, and required an initial overhaul, of the DC generator (bearings). That NPRM resulted from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI described the unsafe condition as:

> Time between overhaul (TBO) of DC [direct current] generator bearings is set at 1,000 flight hours (FH) in the airworthiness limitations section of the Falcon 7X Aircraft Maintenance Manual Chapter 5.40.
>
> In service report has shown that the bearing current design cannot sustain the current TBO. * * *
>
> * * * * *
>
> Failure to comply with those revised maintenance tasks could constitute an unsafe condition.

The proposed actions were intended to prevent failure of the DC generator bearings, which could lead to loss of the generator and potential loss of electrical power to the fly-by-wire system and subsequent loss of control of the airplane.

Actions Since NPRM (76 FR 13924, March 15, 2011) Was Issued

Since we issued the NPRM (76 FR 13924, March 15, 2011), the airplane manufacturer provided further information on the redundancy of the electrical system that supplies power to the fly-by-wire system. There are three DC generators that can supply electrical power to the fly-by-wire system. Electrical power can also be supplied by two independent permanent magnet alternator converters that are dedicated to that system. Failure of all three DC generators to supply electrical power automatically triggers a command to deploy the ram air turbine, which will supply the airplane systems (including fly-by-wire) with sufficient electrical power for continued safe flight and landing.

FAA's Conclusions

Upon further consideration, we have determined that, based on the airplane design, and the multiple electrical power generation sources, the potential loss of one DC generator due to an un-reduced maintenance interval would not result in loss of electrical power to the airplane. Therefore, the potential loss of one DC generator does not constitute an unsafe condition. Accordingly, the NPRM (76 FR 13924, March 15, 2011) is withdrawn.

Withdrawal of the NPRM (76 FR 13924, March 15, 2011) does not preclude the FAA from issuing another related action or commit the FAA to any course of action in the future.

Regulatory Impact

Since this action only withdraws an NPRM (76 FR 13924, March 15, 2011), it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Withdrawal

Accordingly, we withdraw the NPRM, Docket No. FAA–2011–0222, Directorate Identifier 2010–NM–056–AD, which was published in the **Federal Register** on March 15, 2011 (76 FR 13924).

Issued in Renton, Washington, on June 12, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–15097 Filed 6–19–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 876

[Docket No. FDA–2012–N–0303]

Gastroenterology-Urology Devices; Reclassification of Implanted Blood Access Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to reclassify the implanted blood access device preamendments class III device into class II (special controls). FDA is proposing this reclassification on its own initiative based on new information. FDA is taking this action under the Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (SMDA), the Food and Drug Administration Modernization Act of 1997 (FDAMA), and the Medical Device User Fee and Modernization Act of 2002 (MDUFMA).

DATES: Submit either electronic or written comments on the proposed rule by September 18, 2012. Please see section XIII of this document for the effective date of any final rule that may publish based on this proposal.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2012–N–0303 by any of the following methods, except that comments on information collection issues under the Paperwork Reduction Act of 1995 must be submitted to the Office of Regulatory Affairs, Office of Management and Budget (OMB) (see the ''Paperwork Reduction Act of 1995'' section of this document).

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- *Fax:* 301–827–6870.
- *Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and docket number for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jeffrey Cooper, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. G228, Silver Spring, MD 20993, 301–796–6517.

SUPPLEMENTARY INFORMATION:

I. Background—Regulatory Authorities

The FD&C Act, as amended by the 1976 amendments (Pub. L. 94–295), the SMDA (Pub. L. 101–629), the FDAMA

(Pub. L. 105–115), the MDUFMA (Pub. L. 107–250), the Medical Devices Technical Corrections Act (Pub. L. 108–214), and the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85), establish a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) established three categories (classes) of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the FD&C Act, devices that were in commercial distribution before the enactment of the 1976 amendments, May 28, 1976 (generally referred to as preamendments devices), are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976 (generally referred to as postamendments devices) are automatically classified by section 513(f) of the FD&C Act into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval unless, and until, the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

A preamendments device that has been classified into class III may be marketed by means of premarket notification procedures (510(k) process) without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the FD&C Act (21 U.S.C. 360e(b)) requiring premarket approval.

Section 513(e) of the FD&C Act governs reclassification of classified preamendments devices. This section provides that FDA may, by rulemaking, reclassify a device (in a proceeding that parallels the initial classification proceeding) based upon ''new information.'' FDA can initiate a reclassification under section 513(e) of the FD&C Act or an interested person may petition FDA to reclassify a preamendments device. The term ''new information,'' as used in section 513(e) of the FD&C Act, includes information developed as a result of a reevaluation of the data before the Agency when the device was originally classified, as well as information not presented, not available, or not developed at that time. (See, e.g., *Holland Rantos* v. *United States Department of Health, Education, and Welfare,* 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch,* 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard,* 366 F.2d 177 (7th Cir. 1966).)

Reevaluation of the data previously before the Agency is an appropriate basis for subsequent regulatory action where the reevaluation is made in light of newly available regulatory authority (see *Bell* v. *Goddard,* supra, 366 F.2d at 181; *Ethicon, Inc.* v. *FDA,* 762 F.Supp. 382, 389–391 (D.D.C. 1991)) or in light of changes in ''medical science.'' (See *Upjohn* v. *Finch,* supra, 422 F.2d at 951). Whether data before the Agency are past or new data, the ''new information'' to support reclassification under section 513(e) must be ''valid scientific evidence,'' as defined in section 513(a)(3) of the FD&C Act and 21 CFR 860.7(c)(2). (See, e.g., *General Medical Co.* v. *FDA,* 770 F.2d 214 (D.C. Cir. 1985); *Contact Lens Assoc.* v. *FDA,* 766 F.2d 592 (D.C. Cir.), cert. denied, 474 U.S. 1062 (1985)).

FDA relies upon ''valid scientific evidence'' in the classification process to determine the level of regulation for devices. To be considered in the reclassification process, the valid scientific evidence upon which the Agency relies must be publicly available. Publicly available information excludes trade secret and/or confidential commercial information, e.g., the contents of a pending PMA. (See section 520(c) of the FD&C Act (21 U.S.C. 360j(c).) Section 520(h)(4) of the FD&C Act, added by FDAMA, provides that FDA may use, for reclassification of a device, certain information in a PMA 6 years after the application has been approved. This includes information from clinical and preclinical tests or studies that demonstrate the safety or effectiveness of the device but does not include descriptions of methods of manufacture or product composition and other trade secrets.

FDAMA added a new section 510(m) to the FD&C Act. New section 510(m) of the FD&C Act provides that a class II device may be exempted from the premarket notification requirements under section 510(k) of the FD&C Act, if the Agency determines that premarket notification is not necessary to assure the safety and effectiveness of the device.

II. Regulatory History of the Device

In the preamble to the proposed rule (46 FR 7616, January 23, 1981), the Gastroenterology-Urology Devices Panel recommended that both implanted and nonimplanted blood access devices be classified into class II. Although FDA agreed with the panel recommendation for nonimplanted blood access devices, FDA disagreed with the panel for implanted blood access devices and proposed that implanted blood access devices be classified into class III because FDA believed that the device presented a potential unreasonable risk of illness or injury to the patient if there are not adequate data to assure the safe and effective use of the device. FDA also noted that the implanted blood access device is part of a life-supporting and life-sustaining system and that general controls and performance standards were insufficient to provide reasonable assurance of the safety and effectiveness of implanted blood access devices. In 1983, FDA classified implanted blood access devices into class III, but the accessories to these devices into class II (48 FR 53012, November 23, 1983). In 1987, FDA published a clarification by inserting language in the codified language stating that no effective date had been established for the requirement for premarket approval for implanted blood access devices (52 FR 17732 at 17738, May 11, 1987).

In 2009, FDA published an order for the submission of information on implanted blood access devices (74 FR 16214, April 9, 2009). In response to that order, FDA received information in support of reclassification from 15 device manufacturers who all recommended that implanted blood access devices be reclassified to class II. The manufacturers stated that safety and effectiveness of these devices may be assured by bench testing, biocompatibility testing, sterility testing, expiration date testing, labeling, and standards.

III. Device Description

Implanted blood access devices include various flexible or rigid tubes, such as catheters, cannulae or hollow needles. Chronic hemodialysis catheters are soft, blunt-tipped plastic catheters that have a subcutaneous ''cuff'' for tissue ingrowth. They are placed in a central vein to allow blood access. Chronic hemodialysis catheters serve as

conduits for the removal of blood from the patient, delivery to a hemodialysis machine for filtering, and return of filtered blood to the patient. They have no moving parts, consisting, essentially, of flexible tubing terminating in rigid Luer lock connectors for attachment to a dialysis machine. Subcutaneous catheters are totally implanted below the skin surface with no external communication. AV Shunts and Vessel Tips are tubing with tapered tips that are inserted into the artery and vein. The tubing is attached to the roughened or etched outer surface of the tip. The tubing is external to the skin and can be accessed with needles. They are similar to the subcutaneous catheters.

IV. Proposed Reclassification

FDA is proposing that the device subject to this proposal be reclassified from class III to class II. FDA believes that the identified special controls would provide reasonable assurance of safety and effectiveness. Therefore, in accordance with sections 513(e) and 515(i) of the FD&C Act and 21 CFR 860.130, based on new information with respect to the devices, FDA, on its own initiative, is proposing to reclassify this preamendments class III device into class II. The Agency has identified special controls that would provide reasonable assurance of their safety and effectiveness. FDA has considered implanted blood access devices in accordance with the reserved criteria and decided that the device does require premarket notification. The Agency does not intend to exempt this proposed class II device from premarket notification (510(k)) submission as provided for under section 510(m) of the FD&C Act.

V. Risks to Health

After considering the information from the reports and recommendations of the advisory committees (panels) for the classification of these devices along with information submitted in response to the 515(i) order and any additional information that FDA has encountered, FDA has evaluated the risks to health associated with the use of implanted blood access devices and determined that the following risks to health are associated with its use:

1. *Thrombosis in patient and catheter.* Inadequate blood compatibility of the materials used in this device, blood pooling between dialysis sessions, or turbulent blood pathways could lead to potentially debilitating or fatal thromboembolism.

2. *Adverse tissue reaction.* Inadequate tissue compatibility of the materials used in this device could cause an immune reaction.

3. *Infection and pyrogen reactions.* An improperly sterilized device could cause an infection or an unclean device could cause a fever.

4. *Device failure.* Weakness of connections or materials could lead to blood loss.

5. *Cardiac Arrhythmia, hemorrhage, embolism, nerve injury, or vessel perforation.* Improper placement into the heart or blood vessel could damage tissues and result in injuries.

6. *Hemolysis.* The destruction of red blood cells due to turbulence or high pressure created by narrow openings or changes in blood flow paths.

VI. Summary of Reasons for Reclassification

FDA believes that implanted blood access devices should be reclassified into class II because special controls, in addition to general controls, can be established to provide reasonable assurance of the safety and effectiveness of the device. In addition, there is now adequate effectiveness information sufficient to establish special controls to provide such assurance.

VII. Summary of Data Upon Which the Reclassification is Based

Since 1987 when FDA classified implanted blood access devices into class III, sufficient evidence has been developed to support a reclassification to class II with special controls. FDA has been reviewing these devices for many years and their risks are well known. The risks include clotting, infection, and breakage of the materials, and these risks can be adequately mitigated by special controls. Catheters continue to evolve over time with improved materials and insertion techniques. A review of 15 publications shows a decrease in infections and an increase in patency over three decades (1980 to 2010) (Refs. 2–16). FDA believes that special controls currently in use can ensure the safety and effectiveness of implanted blood access devices.

VIII. Proposed Special Controls-Related Documents

FDA believes that the special controls as described in the guidance document ''Class II Special Controls Guidance Document: Implanted Blood Access Devices for Hemodialysis'' (Ref. (1) are sufficient to mitigate the risks to health described in section V of this document. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a draft guidance document that, when finalized, would serve as a special control, if FDA reclassifies this device. If adopted, following the effective date of a final rule classifying the device, any firm submitting a 510(k) premarket notification for the device would need to address the issues covered in the special control guidance. However, the firm would need to show only that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

IX. Environmental Impact

The Agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

X. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612) and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this proposed rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because reclassification of implanted blood access devices from class III to class II with special controls makes these devices' formal classification consistent with current FDA and industry practice, the Agency proposes to certify that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation)

in any one year.'' The current threshold after adjustment for inflation is $136 million, using the most current (2010) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

FDA is proposing to reclassify implanted blood access devices from class III to class II with special controls. Typically, a class III device must be granted premarket approval by FDA. However, at the present time, implanted blood access devices are handled in a fashion similar to class II devices, with manufacturers receiving clearance to market via a 510(k) and no PMA requirement. Hence, this rule brings the formal classification of implanted blood access devices into line with current practice and will likely cause little to no change in behavior on the part of industry, consumers, or FDA. There remains the possibility that some new actions will be required of industry in light of the formalization of class II special controls. To the extent that manufacturers are not already complying with the recommendations contained in the special controls guidance document, manufacturers will incur additional costs, which may then be passed on to consumers or insurance payers in the form of higher prices. We anticipate that such costs will be negligible, however, because the proposed special controls for labeling, safety, and performance testing reflect current FDA requirements for marketing clearance of implanted blood access devices.

FDA has already recognized that the 510(k) premarket notification process is sufficient for ensuring the safety and effectiveness of these products. Firms have not been required to submit PMAs or meet other requirements typically expected of manufacturers of class III devices, and the Agency expects that continuing the current 510(k) clearance process will pose no new risks to consumers. FDA requests comment on this issue and on all costs and benefits of the proposed reclassification.

XI. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive order requires Agencies to ''construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' Federal law includes an express preemption provision that preempts certain state requirements ''different from or in addition to'' certain Federal requirements applicable to devices. (See section 521 of the FD&C Act (21 U.S.C. 360k); *Medtronic, Inc.* v. *Lohr,* 518 U.S. 470 (1996); and *Riegel* v. *Medtronic, Inc.* 128 S. Ct. 999 (2008)). If this proposed rule is made final, the special controls established by the final rule would create ''requirements'' for specific medical devices under 21 U.S.C. 360(k), even though product sponsors have some flexibility in how they meet those requirements (Cf. *Papike* v. *Tambrands, Inc.,* 107 F.3d 737, 740–742 (9th Cir. 1997)).

XII. Paperwork Reduction Act of 1995

This proposed rule refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in part 807 subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814 subpart B have been approved under OMB control number 0910–0231; and the collections of information under 21 CFR part 801 have been approved under OMB control number 0910–0485.

XIII. Proposed Effective Date

FDA is proposing that any final rule based on this proposal become effective on the date of its publication in the **Federal Register** or at a later date if stated in the final rule.

XIV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

XV. References

The following reference has been placed on display in the Division of Dockets Management (see **ADDRESSES**), and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site address, but we are not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

1. Draft guidance entitled ''Class II Special Controls Guidance Document: Implanted Blood Access Devices for Hemodialysis,'' available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm*
2. Eisenhauer ED, Derveloy RJ, Hastings PR: Prospective evaluation of central venous pressure (CVP) catheters in a large city-county hospital. Ann Surg 196:560–564, 1982.
3. Vanholder V, Hoenich N, Ringoir S: Morbidity and mortality of central venous catheter hemodialysis: a review of 10 years' experience. Nephron 47:274–279, 1987.
4. Almirall J, Gonzalez J, Rello J, Campistol JM, Montoliu J, Puig de la Bellacasa J, Revert L, Gatell JM: Infection of hemodialysis catheters: incidence and mechanisms. Am J Nephrol 9:454–459, 1989.
5. Boyle MJ, Gawley WF, Hickey DP, Drumm J, Murphy DM, Hanson JS, Glacken P: Experience using the Quinton Permcath for haemodialysis in the Irish Republic. Nephrol Dial Transplant 12:1934–1939, 1997.
6. Randolph AG, Cook DJ, Gonzales CA, Pribble CG: Ultrasound guidance for placement of central venous catheters: a meta-analysis of the literature. Crit Care Med 24:2053–2058, 1996.
7. Arnold WP: Improvement in hemodialysis vascular access outcomes in a dedicated access center. Semin Dial 13:359–363, 2000.
8. Wivell W, Bettmann MA, Baxter B, Langdon DR, Remilliard B, Chobanian M: Outcomes and performance of the Tesio twin catheter system placed for hemodialysis access. Radiology 221:697–703, 2001.
9. Lund GB, Trerotola SO, Scheel PF Jr, Savader SJ, Mitchell SE, Venbrux AC, Osterman FA Jr: Outcome of tunneled hemodialysis catheters placed by radiologists. Radiology 198:467–472, 1996.
10. Trerotola SO, Johnson MS, Harris VJ, Shah H, Ambrosius WT, McKusky MA, Kraus MA: Outcome of tunneled hemodialysis catheters placed via the right internal jugular vein by interventional radiologists. Radiology 203:489–495, 1997.
11. Prabhu PN, Kerns SR, Sabatelli FW, Hawkins IF, Ross EA: Long-term performance and complications of the Tesio twin catheter system for hemodialysis access. Am J Kidney Dis 30:213–218, 1997.
12. Schnabel KJ, Simons ME, Zevallos GF, Pron GE, Fenton SS, Sniderman KW, Vanderburgh LC: Image-guided insertion of the Uldall tunneled hemodialysis catheter: technical success and clinical follow-up. J Vasc Interv Radiol 8:579–586, 1997.
13. Nassar GM, Ayus JC: Infectious complications of the hemodialysis

access. Kidney Int 60:1–13, 2001 (1990s data).
14. Power A, Singh SK, Ashby D, Cairns T, Taube D, Duncan N: Long-term Tesio catheter access for hemodialysis can deliver high dialysis adequacy with low complication rates. J Vasc Interv Radiol 22:631–637, 2011.
15. Duncan ND, Singh S, Cairns TD, Clark M, El-Tayar A, Griffith M, Hakim N, Hamady M, McLean AG, Papalois V, Palmer A, Taube D: Tesio-Caths provide effective and safe long-term vascular access. Nephrol Dial Transplant 19:2816–2822, 2004.
16. Eisenstein I, Tarabeih M, Magen D, Pollack S, Kassis I, Ofer A, Engel A, Zelikovic I: Low infection rates and prolonged survival times of hemodialysis catheters in infants and children. Clin J Am Soc Nephrol 6:793–798, 2011.

List of Subjects in 21 CFR Part 876

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 876 be amended as follows:

PART 876—GASTROENTEROLOGY—UROLOGY DEVICES

1. The authority citation for 21 CFR part 876 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

2. Section 876.5540 is amended by revising paragraphs (a)(1), (a)(2), and (b)(1) and by removing paragraph (c) to read as follows:

§ 876.5540 Blood access device and accessories.

(a) * * *

(1) The implanted blood access device consists of various flexible or rigid tubes, such as catheters, or cannulae, which are surgically implanted in appropriate blood vessels, may come through the skin, and are intended to remain in the body for 30 days or more. This generic type of device includes: Single, double, and triple lumen catheters with cuffs, subcutaneous ports with catheters, shunts, cannula, vessel tips, and connectors specifically designed to provide access to blood.

(2) The nonimplanted blood access device consists of various flexible or rigid tubes, such as catheters, cannulae or hollow needles, which are inserted into appropriate blood vessels or a vascular graft prosthesis (§§ 870.3450 and 870.3460), and are intended to remain in the body for less than 30 days. This generic type of device includes noncuffed catheters, fistula needles, single dialysis needles (coaxial flow needle), and the single needle dialysis set (alternating flow needle).

* * * * *

(b) *Classification.* (1) Class II (special controls) for the implanted blood access device. The special control for this device is FDA's ''Class II Special Controls Guidance Document: Implanted Blood Access Devices for Hemodialysis.''

* * * * *

Dated: June 15, 2012.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2012–15024 Filed 6–19–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0906]

RIN 1625–AA87

Security Zone; Cruise Ships, Santa Barbara Harbor, Santa Barbara, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish fixed security zones around and under any cruise ships visiting Santa Barbara Harbor, Santa Barbara, California. This proposed regulation is needed for national security reasons to protect cruise ships, vessels, users of the waterway and the port from potential terrorist acts. These security zones would encompass all navigable waters from the surface to the sea floor within a 100-yard radius of any cruise ship located within 3 nautical miles of the Santa Barbara Harbor Breakwater Light (Light List Number 3750). Entry into these zones would be prohibited unless specifically authorized by the Captain of the Port (COTP) Los Angeles—Long Beach (LA–LB), or his designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before July 20, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0906 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Ensign Brett M. DiManno, Prevention, Sector Los Angeles—Long Beach, Coast Guard; telephone 310–521–3869, email *brett.m.dimanno@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0906), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2011–0906'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0906'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress added section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Magnuson Act (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns, and to take steps to prevent the catastrophic impact a terrorist attack against a cruise ship would have on the public interest, the Coast Guard proposes to establish security zones around and under cruise ships visiting Santa Barbara Harbor, Santa Barbara, California. This security zone helps the Coast Guard to prevent vessels or persons from engaging in terrorist actions against cruise ships. The Coast Guard has determined the establishment of security zones is prudent for cruise ships because they carry a multitude of passengers.

Based on experience with security zone enforcement operations, the Captain of the Port (COTP) Los Angeles—Long Beach has concluded that these security zones should encompass all navigable waters from the surface to the sea floor within a 100-yard radius of any cruise ship which is located within 3 nautical miles seaward of the Santa Barbara Harbor Breakwater Light (Light List Number 3750; 34–24–17.364 N, 119–41–16.260W). These security zones are necessary to provide for the safety of the cruise ship, vessels, and users of the waterway.

Discussion of Proposed Rule

The Coast Guard proposes to establish security zones around and under cruise ships which visit Santa Barbara Harbor, Santa Barbara, California. This proposed rule, for security concerns, prohibits entry of any vessel inside the security zone surrounding a cruise ship. These security zones would encompass all navigable waters from the surface to the sea floor within a 100-yard radius of any cruise ship located within 3 nautical miles of the Santa Barbara Harbor Breakwater Light (Light List Number 3750; 34–24–17.364 N, 119–41–16.260W). These security zones are needed for national security reasons to protect cruise ships, the public, and transiting vessels, from potential subversive acts, accidents, or other events of a similar nature. Entry into the zone would be prohibited unless specifically authorized by the Captain of the Port or his designated representative. Vessels already moored or anchored when these security zones take effect are not required to get underway to avoid the zones unless specifically ordered to do so by the Captain of the Port or his designated representative.

The Captain of the Port will enforce these zones and may request the use of resources and personnel of other government agencies to assist in the patrol and enforcement of the regulation.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We expect the economic impact of this rule to be so minimal that full Regulatory Evaluation is unnecessary. Although this regulation restricts access to a portion of navigable waters, the effect of this regulation is not significant because:

i. The zones only encompass a small portion of the waterway;

ii. Vessels are able to pass safely around the zones; and

iii. Vessels may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port (COTP) Los Angeles—Long Beach, or his designated representative.

The size of the zone is the minimum necessary to provide adequate protection for all cruise ships and other vessels operating in the vicinity of these vessels, adjoining areas, and the public. The entities most likely to be affected are fishing vessels and pleasure craft engaged in recreational activities and sightseeing.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in Santa Barbara Harbor within a 100-yard radius of cruise ships covered by this rule.

This security zone regulation will not have a significant economic impact on a substantial number of small entities because vessel traffic can pass safely around the zones.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the establishment of security zones. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.1157 to read as follows:

§ 165.1157 Security Zone; Cruise Ships, Santa Barbara, California.

(a) *Location.* The following areas are security zones: All navigable waters, from the surface to the sea floor within a 100-yard radius of any cruise ship located within 3 nautical miles of the Santa Barbara Harbor Breakwater Light (Light List Number 3750; 34–24–17.364 N, 119–41–16.260W).

(b) *Definition.* ''*Cruise ship''* as used in this section means any vessel, except for a ferry, over 100 feet in length, authorized to carry more than 12 passengers for hire; making voyages lasting more than 24 hours, any part of which is on the high seas; and for which passengers are embarked or disembarked in the U.S. or its territories.

(c) *Regulations.* (1) Under general security zone regulations in subpart D, entry into or remaining in the zones described in paragraph (a) of this section is prohibited unless authorized by the Coast Guard Captain of the Port (COTP) Los Angeles—Long Beach (LA–LB), or a designated representative of COTP LA–LB.

(2) Persons desiring to transit the area of the security zone may contact the COTP LA–LB at telephone number 1–310–521–3801 or on VHF–FM channel 16 (156.800 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port, or his designated representative.

Dated: May 11, 2012.

R.R. Laferriere,

Captain, U.S. Coast Guard, Captain of the Port Los Angeles Long Beach.

[FR Doc. 2012–14973 Filed 6–19–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter II

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Subtitle A, Subchapter A

[Docket ID ED–2012–OESE–0012; CFDA Number 84.412A]

RIN 1810–AB15

Proposed Requirements—Race to the Top—Early Learning Challenge; Phase 2

AGENCY: Department of Education and Department of Health and Human Services.

ACTION: Proposed requirements.

SUMMARY: The Secretary of Education and the Secretary of Health and Human Services (hereafter ''the Secretaries'') propose requirements for Phase 2 of the Race to the Top—Early Learning Challenge (RTT–ELC) program. In this phase (Phase 2 of the RTT–ELC program), we would make awards to certain States that applied for, but did not receive, funding under Phase 1 of the RTT–ELC competition held in fiscal year (FY) 2011 (FY 2011 RTT–ELC competition). Specifically, we would consider eligible the five highest-scoring applicants that did not receive funding in the FY 2011 RTT–ELC competition, each of which received approximately 75 percent or more of the available points under the competition. We take this action to fund down the slate of the FY 2011 RTT–ELC competition and to establish the information and assurances that the eligible applicants would need to provide in order to receive funding under Phase 2 of the RTT–ELC program.

DATES: We must receive your comments on or before July 20, 2012.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID and the term ''Race to the Top-Early Learning Challenge Phase 2 Awards'' at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How to Use This Site.''
- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed requirements, address them to the Office of Elementary and Secondary Education (Attention: Race to the Top-Early Learning Challenge Phase 2 Comments), U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202–6200.

Privacy Note: The Department of Education's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Deborah Spitz, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E230, Washington, DC 20202–6200. Telephone: (202) 260–3793 or by email: *RTT.Early.Learning.Challenge@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action: The Departments of Education and Health and Human Services (Departments) plan to implement Phase 2 of the RTT–ELC program by funding down the slate from the FY 2011 RTT–ELC competition. Specifically, the Departments plan to make awards available to the next five highest-scoring applicants that did not receive funding under the FY 2011 RTT–ELC competition. Because the amount of available funds in FY 2012 is limited, this action proposes specific requirements that the five eligible applicants must meet in order to receive up to 50 percent of the funds they requested in their FY 2011 RTT–ELC applications.

Summary of the Major Provisions of This Regulatory Action: In this notice, we propose to establish a limited number of application requirements, assurances, and budget requirements that the five eligible applicants must meet in order to receive funds under Phase 2 of the RTT–ELC program.

The *Application Requirements,* which can be found in section III of the *Proposed Requirements* section of this notice, include a requirement that each eligible applicant must: (1) Describe how it would implement the activities proposed in Core Area B (selection

criteria one through five) of its FY 2011 RTT–ELC application; (2) describe how it would implement the activities proposed in Competitive Preference Priority 2 of its FY 2011 RTT–ELC application; and (3) from two or more of the three Focused Investment Areas (C, D, and E) in its FY 2011 RTT–ELC application, select activities proposed in response to one or more selection criteria. The *Application Requirements* section further explains how applicants may make adjustments to the scope of the activities they proposed in their FY 2011 RTT–ELC applications to ensure that the activities can be carried out successfully with the amount of funds available in Phase 2 of the RTT–ELC program.

The *Application Assurances,* which can be found in section IV of the *Proposed Requirements* section of this notice, include a set of assurances for eligible applicants to include in their applications for Phase 2 RTT–ELC awards. These assurances relate to commitments made in the FY 2011 RTT–ELC applications. For example, in order to receive a Phase 2 RTT–ELC award, an eligible applicant must maintain the commitments made in Section A(1) of its FY 2011 RTT–ELC application, which describes existing State funding for early learning. Each eligible applicant must also maintain commitments to engage in partnerships described in its FY 2011 RTT–ELC application. This is important because the strength of these commitments influenced how reviewers scored the FY 2011 RTT–ELC applications. These commitments are also critical to building strong State systems of early learning and development.

The proposed Budget Requirements, which can be found in section V of the *Proposed Requirements* section of this notice, require that an eligible applicant complete a revised budget and narrative that includes an explanation of why the eligible applicant has selected the activities it proposes to carry out (as described under ''Application Requirements'') and why such activities will have the greatest impact on advancing its high-quality plan for early learning.

Costs and Benefits: We have determined that these proposed requirements would not impose significant additional costs to States, the eligible applicants under the RTT–ELC program, or the Federal Government and that the potential benefits would exceed the costs. The Departments believe States would incur minimal costs in developing plans and budgets for implementing selected activities from their FY 2011 RTT–ELC proposals, because such planning would entail revisions to existing plans and budgets already developed as part of the FY 2011 RTT–ELC application process.

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final requirements, we urge you to identify clearly the specific proposed requirement that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed requirements. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice by accessing *Regulations.gov*. You may also inspect the comments in person in room 3E230, 400 Maryland Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of the RTT–ELC program is to improve the quality of early learning and development and close the achievement gap for children with high needs. This program focuses on improving early learning and development for young children by supporting States' efforts to increase the number and percentage of low-income and disadvantaged children, in each age group of infants, toddlers, and preschoolers, who are enrolled in high-quality early learning and development programs; and designing and implementing an integrated system of high-quality early learning and development programs and services.

Program Authority: Sections 14005 and 14006, Division A, of the American Recovery and Reinvestment Act of 2009, as amended by section 1832(b) of Division B of Public Law 112–10, the Department of Defense and Full-Year Continuing Appropriations Act, 2011, and the Department of Education Appropriations Act, 2012 (Title III of Division F of Pub. L. 112–74, the Consolidated Appropriations Act, 2012).

Proposed Requirements

Background:

A critical focus of the Departments is supporting America's youngest learners and helping ensure that children, especially young children with high needs, such as those who are from low-income families, English learners, and children with disabilities or developmental delays, enter kindergarten ready to succeed in school and in life. A robust body of research demonstrates that high-quality early learning and development programs and services can improve young children's health, social-emotional, and cognitive outcomes; enhance school readiness; and help close the school readiness gap[1] [2] that exists between children with high needs and their peers at the time they enter kindergarten.[3] [4]

To address this school readiness gap, the Departments have identified, as high priorities, strengthening the quality of early learning and development programs and increasing access to high-quality early learning and development programs for all children, including those with high needs.

On May 25, 2011, Secretaries Arne Duncan and Kathleen Sebelius announced the Race to the Top-Early Learning Challenge, a new $500 million State-level grant competition authorized under the American Recovery and Reinvestment Act of 2009 (ARRA), as amended by section 1832(b) of the Department of Defense and Full-Year Continuing Appropriations Act, 2011. Through the RTT–ELC program, the

[1] Camilli, G., Vargas, S., Ryan, S., & Barnett, W. S. (2010). Meta-analysis of the effects of early education interventions on cognitive and social development. *Teachers College Record, 112*(3), 579–620.

[2] Reynolds, A.J., Temple, J.A., Ou, S., Arteaga, I.A., & White, B.A.B. (2011). School-based early childhood education and age-28 well-being: effects by timing, dosage, and subgroups. *Science,* Retrieved from *http://www.sciencemag.org/content/early/2011/06/08/science.1203618.abstract doi: 10.1126/science.1203618.*

[3] Princiotta, D., Flanagan, K. D., and Germino Hausken, E. (2006). *Fifth Grade: Findings From The Fifth-Grade Follow-up of the Early Childhood Longitudinal Study, Kindergarten Class of 1998–99 (ECLS–K). (NCES 2006–038) U.S. Department of Education.*

[4] Halle, T., Forry, N., Hair, E., Perper, K., Wandner, L., Wessel, J., & Vick, J.(2009). *Disparities in Early Learning and Development: Lessons from the Early Childhood Longitudinal Study—Birth Cohort (ECLS–B).* Washington, DC: Child Trends.

Departments seek to help close the achievement gap between children with high needs and their peers by supporting State efforts to build strong systems of early learning and development that provide increased access to high-quality programs for the children who need them most.

The FY 2011 RTT–ELC competition represented an unprecedented opportunity for States to focus deeply on their early learning and development systems for children from birth through age five. (See notice inviting applications for the competition, published in the **Federal Register** on August 26, 2011 (76 FR 53564).) Through the FY 2011 RTT–ELC competition, States were given an opportunity to build a more unified approach to supporting young children and their families—an approach that increases access to high-quality early learning and development programs and services and helps ensure that children enter kindergarten with the skills, knowledge, and dispositions toward learning they need to be successful.

In December 2011, the Departments made awards to the nine highest-scoring applications from the FY 2011 RTT–ELC competition: California, Delaware, Maryland, Massachusetts, Minnesota, North Carolina, Ohio, Rhode Island, and Washington. (Due to the limited amount of funding available and its ranking on the slate, California received approximately half of the funding it requested.)

On December 23, 2011, Public Law 112–74, the Consolidated Appropriations Act, 2012, which made $550 million available for the Race to the Top Fund, was signed into law. This legislation authorized the Secretary of Education to make Race to the Top Fund awards on ''the basis of previously submitted applications.'' The Department of Education must obligate these funds by December 31, 2012.

On April 9, 2012, the Departments announced that approximately $133 million of the $550 million appropriated for the Race to the Top Fund would be made available to the next five highest-scoring applicants from the FY 2011 RTT–ELC competition. These five applicants, each of which received approximately 75 percent or more of the available points under the competition, are Colorado, Illinois, New Mexico, Oregon, and Wisconsin. Throughout this notice, these States are referred to as ''eligible applicants'' for Phase 2 of the RTT–ELC program, under which the Departments will fund down the slate of applications from the FY 2011 RTT–ELC competition. While $133 million is not sufficient to support full implementation of the plans submitted by these States in the FY 2011 RTT–ELC competition, the Secretaries believe that supporting high-scoring applicants that did not receive funding under the FY 2011 RTT–ELC competition with FY 2012 funding will help build on the momentum from the FY 2011 RTT–ELC competition and engage more States to transform the patchwork of disconnected early childhood programs into a coordinated and high-quality system. Therefore, we propose to make FY 2012 funds available to the eligible applicants at up to 50 percent of the funds each requested in its application for funds under the FY 2011 RTT–ELC competition. Through this notice, we propose the requirements for implementing Phase 2 of the RTT–ELC program, under which the Departments will fund down the slate from the FY 2011 RTT–ELC competition.

The Department of Education may use any unused funds from Phase 2 of the RTT–ELC program to make awards in the FY 2012 district-level Race to the Top competition, which will be announced in a separate notice published in the **Federal Register.** Conversely, the Department of Education may use any unused FY 2012 funds from the district-level Race to the Top Fund competition to supplement the awards for Phase 2 of the RTT–ELC program.

In this notice, we propose specific requirements that eligible applicants would have to meet in order to apply for up to 50 percent of the funds they requested in their FY 2011 RTT–ELC competition applications.

The FY 2011 RTT–ELC competition identified five key reform areas representing the foundation of an effective early learning and development reform agenda that is focused on school readiness and ongoing educational success. These areas, which provided a framework for the competition's priorities, requirements, and selection criteria, are as follows:

(A) Successful State Systems;

(B) High-Quality, Accountable Programs;

(C) Promoting Early Learning and Development Outcomes for Children;

(D) A Great Early Childhood Education Workforce; and

(E) Measuring Outcomes and Progress.

The first two of these reform areas, (A) and (B), are core areas of focus for this program (hereafter ''Core Areas''), and applicants under the FY 2011 RTT–ELC competition were required to respond to all selection criteria under these Core Areas. The reform areas in (C), (D), and (E) are areas (hereafter ''Focused Investment Areas'') where applicants directed targeted attention to specific activities that were relevant to their State's context. Applicants were required to address each Focused Investment Area but not all of the selection criteria under them.

Proposed Requirements

The Departments propose the following requirements to implement Phase 2 of the RTT–ELC program. Except where otherwise indicated in this notice, the priorities, requirements, and definitions in the notice inviting applications for the FY 2011 RTT–ELC competition, published in the **Federal Register** on August 26, 2011 (76 FR 53564), would also apply to the RTT–ELC Phase 2 application process.

I. Proposed Eligibility Requirements

Eligible applicants for the Phase 2 RTT–ELC award process are those States that applied for funding under the FY 2011 RTT–ELC competition and received approximately 75 percent or more of the available points, but that did not receive grant awards under that competition. Therefore, only the States of Colorado, Illinois, New Mexico, Oregon, and Wisconsin are eligible to apply for Phase 2 RTT–ELC awards.

II. Proposed Award Process

To receive a Phase 2 RTT–ELC award, an eligible applicant must submit—

(a) An application, consistent with its FY 2011 RTT–ELC application, that—

(1) Meets the application requirements described in the *Proposed Application Requirements* section of this notice; and

(2) Provides the assurances described in the *Proposed Application Assurances* section of this notice; and

(b) For review and approval by both Departments, a detailed plan and budget describing the activities selected from its FY 2011 RTT–ELC application that would be implemented with Phase 2 RTT–ELC funding, in accordance with the *Budget Requirements* in this notice.

Note: We encourage eligible applicants to partner with each other and currently funded RTT–ELC grantees in carrying out specific activities (such as validation of a State's Tiered Quality Rating and Improvement System (TQRIS), implementation of longitudinal data systems, or development of a kindergarten entry assessment). Each eligible applicant may apply for Phase 2 RTT–ELC awards individually or as a member of a consortium (with other eligible applicants) under 34 CFR 75.127–129. In any event, an eligible applicant must propose activities for Phase 2 of the RTT–ELC program that are consistent with its FY 2011 RTT–ELC application.

III. Proposed Application Requirements

We propose the following application requirements for eligible applicants that apply for Phase 2 RTT–ELC awards:

(a) Each eligible applicant must describe how it would implement an organizational structure for managing the grant that is consistent with the activities and commitments described in response to selection criterion A(3)(a)(1) [5] of its FY 2011 RTT–ELC application, and describe how it would implement the activities described in response to Core Area B (selection criteria one through five) of its FY 2011 RTT–ELC application using a Phase 2 RTT–ELC award. The FY 2011 RTT–ELC Core Area B criteria promote broad participation in the State's TQRIS across a range of programs, active and continuous program quality improvement, and the publication of program ratings so that families can make informed decisions about which programs can best serve the needs of their children. Specifically, in Core Area B of its FY 2011 RTT–ELC application, each applicant had to demonstrate that it had developed and adopted, or had a high-quality Plan to develop and adopt, a TQRIS. In addition, each applicant must also implement the activities proposed under Competitive Preference Priority 2, including all early learning and development programs in the TQRIS.

(b) In addition to addressing the requirements in paragraph (a) of this section, each eligible applicant must select and describe how it will implement activities that it identified in its FY 2011 RTT–ELC application in response to Focused Investment Areas C, D, or E. The eligible applicant must select activities from two or more of the three Focused Investment Areas C, D, and E, and the activities must be responsive to one or more of the selection criteria under the Focused Investment Areas chosen by the applicant. (Eligible applicants may implement additional activities proposed under more than one selection criterion within each Focused Investment Area.) In determining which selection criteria to address given the amount of available funds under Phase 2 of the RTT–ELC program, each eligible applicant should give consideration to those activities that will have the greatest impact on improving access to high-quality early learning programs for children with high needs.

[5] The selection criteria from the FY 2011 RTT–ELC application can be found at *http://www2.ed.gov/programs/racetothetop-earlylearningchallenge/2011-412.doc* (pp. 26–74).

Note: In light of the reduced funding available, applicants may make adjustments in the scope of services provided to meet selection criteria in Focused Investment Areas C, D, and E. For example, an applicant may propose to serve fewer programs or regions of the State than it proposed to serve in its FY 2011 RTT–ELC application. The eligible applicant must provide a detailed explanation of its rationale for such adjustments and also must amend its targets in Tables B(2)(c) and B(4)(c)(1–2) of the FY 2011 RTT–ELC application, as needed. Applicants should ensure that the adjustments do not diminish the program's impact on improving access to high quality early learning programs for children with high needs. In addition, when the scope of work is adjusted by targeting specific regions in the State, the activities should be consistent across regions.

(c) In addition, each eligible applicant may implement the activities it proposed in response to the Invitational Priorities from its FY 2011 RTT–ELC application. Eligible applicants that wrote to Invitational Priority 2 are encouraged to pursue public-private partnerships to the extent that this will augment total funds available for carrying out the activities described in the FY 2011 RTT–ELC application. Note: We encourage grantees to enter into consortia, where relevant, in order to maximize the use of available funds. Please refer to section (V)(B) later in this notice.

(d) We will use Phase 2 RTT–ELC funding to support only those activities included in an eligible applicant's FY 2011 RTT–ELC application. Therefore, an eligible applicant must not include new activities in its Phase 2 RTT–ELC application.

(e) Each Phase 2 RTT–ELC application must include current signatures by the eligible applicant's Governor or an authorized representative signing on behalf of the Governor; an authorized representative from the eligible applicant's Lead Agency; and an authorized representative from each Participating State Agency.

(f) Each Phase 2 RTT–ELC application must include a newly signed Memorandum of Understanding and a preliminary scope of work for each Participating State Agency.

IV. Proposed Application Assurances

Each eligible applicant must include in its Phase 2 RTT–ELC application the following assurances from its Governor or authorized representative of the Governor of its State:

(a) While the State may make appropriate adjustments to the scope, budget, timeline, and performance targets, consistent with the reduced amount of funding that is available under the Phase 2 RTT–ELC award process, the State will maintain consistency with the absolute priority and all program and eligibility requirements of the FY 2011 RTT–ELC competition.

(b) The State will maintain its commitment to and investment in high-quality, accessible early learning and development programs and services for children with high needs, as described in Section A(1) of its FY 2011 RTT–ELC application.

(c) Subject to adjustments due to the reduced amount of funding available under the Phase 2 RTT–ELC award process, the State will maintain its plan to establish strong participation and commitment by Participating State Agencies and other early learning and development stakeholders as described in Section A(3) of its FY 2011 RTT–ELC application.

(d) The State will maintain its commitment to integrating and aligning resources and policies across Participating State Agencies as described in Section A(3) of its FY 2011 RTT–ELC application.

(e) The State will comply with all of the accountability, transparency, and reporting requirements that applied to the FY 2011 RTT–ELC competition. (See the notice inviting applications for the FY 2011 RTT–ELC competition, published in the **Federal Register** on August 26, 2011 (76 FR 53564).)

(f) The State will comply with the requirements of any evaluation of the RTT–ELC program, or of specific activities it proposes to pursue as part of the program, conducted and supported by the Departments.

V. Proposed Budget Requirements

An eligible applicant may apply for up to 50 percent of the funds requested in its FY 2011 RTT–ELC application. The following budget requirements would apply to the Phase 2 RTT–ELC award process:

(a) *Budget Narrative.* Each eligible applicant must submit a detailed narrative and budget, using the format and instructions provided in the FY 2011 RTT–ELC application package, which describes the activities it has selected from its FY 2011 RTT–ELC application that it proposes to implement with a Phase 2 RTT–ELC award. This detailed narrative must include an explanation of why the eligible applicant has selected these activities and why the eligible applicant believes they will have the greatest impact on advancing its high-quality plan for early learning. The narrative must also explain where the applicant has made adjustments (such as a

reduction in the number of participating programs or areas of the State served) to ensure that the activities can be carried out successfully with the amount of funds available. In reviewing the narrative, we may request the applicant submit revisions to address concerns related to feasibility or the strategic use of funds. (See the notice inviting applications for the FY 2011 RTT–ELC competition, published in the **Federal Register** on August 26, 2011 (76 FR 53564).)

(b) *Applying as a Consortium.* As discussed elsewhere in this notice, we encourage eligible applicants to form consortia with each other and partner with currently funded RTT–ELC grantees in carrying out specific activities (such as validation of a State's TQRIS, implementation of longitudinal data systems, or development of a kindergarten entry assessment). Eligible applicants may apply individually or as members of a consortium (with other eligible applicants) under 34 CFR 75.127–129. Each applicant must propose activities consistent with its FY 2011 RTT–ELC application. Therefore, each eligible applicant that chooses to apply as a member of a consortium or to partner with a current RTT–ELC grantee in carrying out project activities must include in its revised budget narrative an explanation of how the activities to be undertaken by the consortium or partnership are consistent with the applicant's FY 2011 RTT–ELC application and how the consortium or partnership will help the applicant implement its selected activities. It is important to note that an applicant may propose some activities that it would execute alone and others that it would execute as part of a consortium.

(c) *Available Funds.* The maximum amounts of funding for which each eligible applicant may apply are shown in the following table. The amounts in this table are based on the requirement that each eligible applicant may apply for up to half of the amount it requested in its FY 2011 RTT–ELC application.

State	Maximum amount
Colorado	$29,925,888
Illinois	34,798,696
New Mexico	25,000,000
Oregon	20,508,902
Wisconsin	22,701,389

Final Requirements:

We will announce the final requirements for the Phase 2 RTT–ELC award process in a notice in the **Federal Register**. We will determine the final requirements after considering any comments submitted in response to this notice and other information available to the Departments. This notice does not preclude the Departments from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these requirements, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretaries must determine whether a regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or local programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This regulatory action would have an annual effect on the economy of more than $100 million because the amount of government transfers through the Phase 2 RTT–ELC award process exceeds that amount. Therefore, this proposed action is ''economically significant'' and subject to review by OMB review under section 3(f)(1) of Executive Order 12866. Notwithstanding this determination, we have assessed the potential costs and benefits—both quantitative and qualitative—of this proposed regulatory action and have determined that the benefits would justify the costs.

The Departments have also reviewed these proposed requirements under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account—among other things, and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including providing economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed requirements only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Departments believe these proposed regulations are consistent with the principles in Executive Order 13563.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In this regulatory impact analysis we discuss the need for regulatory action, the potential costs and benefits, net budget impacts, assumptions, limitations, and data sources, as well as regulatory alternatives we considered.

Need for Federal Regulatory Action

These proposed requirements are needed to implement the Phase 2 RTT–ELC award process in the manner that the Departments believe will best enable the program to achieve its objectives of creating the conditions for effective reform in State early learning systems in States that had high-scoring applications in the FY 2011 RTT–ELC competition but that did not receive funding in that competition, to implement key elements of their comprehensive reform proposals submitted as part of their FY 2011 RTT–ELC competition applications.

Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action and have determined that these proposed requirements would not impose significant additional costs to State applicants or the Federal Government. Most of the proposed requirements contained in this notice involve re-affirming State commitments and plans already completed as part of the FY 2011 RTT–ELC competition or other Federal education programs. Similarly, other proposed requirements, in particular those related to maintaining conditions for reform required under the FY 2011 RTT–ELC competition, would require continuation of existing commitments and investments rather than the imposition of additional burdens and costs. The Departments believe those States that are eligible for Phase 2 awards would incur minimal costs in developing plans and budgets for implementing selected activities from their FY 2011 RTT–ELC competition proposals, because in most cases such planning would entail revisions to existing plans and budgets already developed as part of the FY 2011 RTT–ELC application process and not the development and implementation of entirely new plans and budgets. In all such cases, the Departments believe that the benefits resulting from the proposed requirements for the Phase 2 RTT–ELC award process, would exceed their costs.

Regulatory Alternatives Considered

An alternative to promulgation of the types of requirements proposed in this notice would be to use FY 2012 Race to the Top funds to make awards to the one or two highest-scoring unfunded applications from the FY 2011 RTT–ELC competition and to use the remaining funds for the Race to the Top district-level competition to be held in FY 2012. We have concluded that approximately $400 million in available FY 2012 funds is necessary to support a meaningful district-level competition.

Moreover, the Departments believe that simply funding the one or two highest-scoring applicants that were not selected in the FY 2011 RTT–ELC competition would result in a missed opportunity to reward the efforts of other high-scoring applicants from that competition and to enable them to make meaningful progress on key elements of their State early learning plans.

To assist the Departments in complying with the requirements of Executive Order 12866, the Secretaries invite comments on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed requirements without impeding the effective and efficient administration of the RTT–ELC program.

Accounting Statement

As required by OMB Circular A–4 (available at *www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), in the following table we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed regulatory action. This table provides our best estimate of the Federal payments to be made to States under this program as a result of this proposed regulatory action. Expenditures are classified as transfers to States.

ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES

Category	Transfers
Annualized Monetized Transfers.	$132,934,875.
From Whom To Whom?	Federal Government to States.

The Phase 2 RTT–ELC award process would provide approximately $133 million in competitive grants to eligible applicants (those five applicants that did not receive funding in the FY 2011 RTT–ELC competition, but which received approximately 75 percent or more of the available points under the competition).

Regulatory Flexibility Act Certification

The Secretaries certify that this proposed regulatory action will not have a significant economic impact on a substantial number of small entities. This proposed regulatory action will not have a significant economic impact on small entities (such as subaward recipients) because they will be able to meet the costs of compliance with this regulatory action using the funds provided under this program.

The Secretaries invite comments from small entities as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, request evidence to support that belief.

Paperwork Reduction Act of 1995

These proposed requirements contain information collection requirements. However, because the eligible applicants for Phase 2 RTT–ELC awards are fewer than 10, these collections are not subject to approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3502(3)(A)(i)).

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Educational Impact: In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Departments invite comment on whether these proposed requirements would require transmission of information that any other agency or authority of the United States gathers or makes available.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** is available via the Federal Digital System at *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of these Departments published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of these Departments published in the **Federal Register** by using the article search feature at *www.federalregister.gov*. Specifically,

through the advanced search feature at this site, you can limit your search to documents published by these Departments.

Dated: June 14, 2012.

Arne Duncan,

Secretary of Education.

Kathleen Sebelius,

Secretary of Health and Human Services.

[FR Doc. 2012–14954 Filed 6–19–12; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2011–0332; FRL–9687–6]

Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Antibacksliding of Major NSR SIP Requirements for the One-Hour Ozone National Ambient Air Quality Standards (NAAQS); Major Nonattainment NSR (NNSR) SIP Requirements for the 1997 Eight-Hour Ozone NAAQS; and Major NSR Reform Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the SIP for the State of Texas that relate to antibacksliding of Major NSR SIP Requirements for the one-hour ozone NAAQS; Major NNSR SIP requirements for the 1997 eight-hour ozone NAAQS; Major NSR Reform Program with Plantwide Applicability Limit (PAL) provisions; and non-PAL aspects of the Major NSR SIP requirements. EPA proposes to find that these changes to the Texas SIP comply with the Federal Clean Air Act (the Act or CAA) and EPA regulations and are consistent with EPA policies. Texas submitted revisions to these programs on June 10, 2005, and February 1, 2006. EPA disapproved these SIP revisions on September 15, 2010 (75 FR 56424). In response to the 2010 disapproval, Texas submitted revisions to these programs in two separate SIP submittals on March 11, 2011. These SIP submittals include resubmittal of the rules that were previously submitted June 10, 2005, and February 1, 2006, and subsequently disapproved by EPA on September 15, 2010. On February 22, 2012, Texas proposed further revisions to the NSR Reform Program to further clarify and ensure compliance with Federal requirements relating to NSR Reform. On May 3, 2012, Texas provided a letter to EPA which requested that EPA parallel process the revisions proposed February 22, 2012, and included a demonstration showing how its submitted rules are at least as stringent as the Federal NSR Reform Program. Texas has requested that EPA parallel process the revisions proposed February 22, 2012, and consider the May 3, 2012, letter in the review of the March 11, 2011, SIP submittals. Today, EPA is proposing to find that the March 11, 2011, SIP submittals; the February 22, 2012, proposed revisions; and the May 3, 2012, letter, address each of the grounds for EPA's September 15, 2010, disapproval and other issues related to the Texas NSR Reform revisions as identified later. Accordingly, EPA proposes to approve these two March 11, 2011, revisions; the February 22, 2012, proposed revisions for which Texas has requested parallel processing; and the May 3, 2012, letter as part of the Texas NSR SIP. EPA is proposing this action under section 110 and parts C and D of the Act.

DATES: Comments must be received on or before July 20, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2011–0332 by one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

(2) *Email:* Mr. Stanley M. Spruiell at *spruiell.stanley@epa.gov*.

(3) *U.S. EPA Region 6 ''Contact Us'' Web site: http://epa.gov/region6/r6coment.htm*. Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.

(4) *Fax:* Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), at fax number 214–665–6762.

(5) *Mail:* Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

(6) *Hand or Courier Delivery:* Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2011–0332. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 Freedom of Information Act Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA

Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittals, which are part of the EPA docket, are also available for public inspection at the State Air Agency during official business hours by appointment: Texas Commission on Environmental Quality (TCEQ), Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733; telephone (214) 665–7212; fax number (214) 665–6762; email address *spruiell.stanley@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever any reference to ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. The State's Submittals

A. What is the background of the Texas programs for Major NSR for the eight-hour National Ambient Air Quality Standard for ozone and for NSR Reform?

1. Major NSR for the Eight-Hour NAAQS for Ozone

On April 30, 2004 (69 FR 23858), EPA promulgated regulations that included requirements for implementing Major NSR for the 1997 eight-hour ozone NAAQS. On May 25, 2005, the TCEQ adopted SIP revisions to implement these requirements and submitted them to EPA on June 10, 2005. The EPA disapproved these regulations September 15, 2010 (75 FR 56424). On March 11, 2011, the TCEQ resubmitted the revisions adopted May 25, 2005, and submitted further revisions, adopted February 9, 2011, to address EPA's September 15, 2010, disapproval.[1] Section I.B of this preamble includes further details of what TCEQ submitted.

2. NSR Reform

On December 31, 2002 (67 FR 80186), EPA promulgated its NSR Reform Program. On November 7, 2003 (68 FR 63021), EPA promulgated a final action on its reconsideration of the December 31, 2002, NSR Reform. On January 11, 2006, TCEQ adopted its regulations for NSR Reform and on February 1, 2006, submitted these regulations to EPA for SIP approval. The EPA disapproved these regulations September 15, 2010 (75 FR 56424). On March 11, 2011, the TCEQ resubmitted the revisions adopted January 11, 2006, and submitted further revisions, adopted February 9, 2011, to address the grounds for EPA's September 15, 2010, disapproval.[2] On February 22, 2012, TCEQ proposed additional revisions to these regulations and requested that EPA parallel process these revisions with the revisions submitted March 11, 2011–2, based upon the revisions that TCEQ proposed February 22, 2012, and subsequent submittal of those revisions following final adoption. TCEQ further submitted a letter dated May 3, 2012, to EPA to meet its Federal NSR Reform Program demonstration requirements that provides its interpretation of certain

[1] In the remainder of this document, we will refer to the Eight-Hour Ozone NSR SIP submittal as submitted March 11, 2011–1, which includes the resubmittal of the NSR Reform revisions adopted May 25, 2005, and additional revisions adopted February 9, 2011.

[2] In the remainder of this document, we will refer to the NSR Reform submittal as submitted March 11, 2011–2, which includes the resubmittal of the NSR Reform revisions adopted January 11, 2006, and additional revisions adopted February 9, 2011.

NSR Reform rules to further clarify and ensure implementation consistent with the Federal NSR Reform Program. Section I.B of this preamble includes further details of what TCEQ submitted.

B. What changes did Texas submit?

On March 11, 2011, the TCEQ submitted the following revisions to the Texas SIP:

- New Source Review for Eight-Hour Ozone Standard; Rule Project Number 2005–009–116–AI, adopted May 25, 2005. These revisions were originally submitted on June 10, 2005. EPA disapproved these SIP revisions on September 15, 2010, 75 FR 56424. The revisions submitted March 11, 2011–1, included the resubmittal of the 2005 revisions in order to reinstate before us for a new action, the rules that we disapproved in 2010.
- Federal New Source Review Permit Rules Reform; Rule Project Number 2006–010–116–PR, adopted January 11, 2006. These revisions were originally submitted on February 1, 2006. EPA disapproved these SIP revisions on September 15, 2010, 75 FR 56424. The revisions submitted March 11, 2011–2, included the resubmittal of the 2006 revisions in order to reinstate before us for a new action, the rules that we disapproved in 2010.
- New Source One-Hour Ozone Major Source Thresholds and Emission Offsets; Rule Project Number 2008–030–116–PR, submitted March 11, 2011–1.
- New Source Review (NSR) Reform; Rule Project Number 2010–008–116–PR, submitted March 11, 2011–2.

On February 22, 2012, the TCEQ proposed revisions to its NSR Reform Program and requested that the EPA parallel process these revisions. On May 3, 2012, Texas provided a letter to EPA which requested that EPA parallel process the revisions proposed February 22, 2012, and included a demonstration showing that certain of its submitted rules are at least as stringent as the Federal NSR Reform Program. The following tables summarize the rules and provide additional information relating to the submitted regulations and the revisions proposed February 22, 2012, for parallel processing and the May 3, 2012, letter. Additional information is also provided in a Technical Support Document (TSD) for this proposed action and which is in the docket.

TABLE 1—RULES SUBMITTED IN EACH SIP SUBMITTAL THAT IS AFFECTED BY THIS ACTION

Description of SIP submittal	Texas rule project No.	Date submitted to EPA	Adopted by State	Effective as State rule	Rules addressed in this action
New Source Review for Eight-Hour Ozone Standard.	2005–009–116–AI, 2008–030–116–PR.	[a] 3/11/2011–1	5/25/2005	6/15/2005	Amended 30 TAC 116.12[c], and 116.150.
Federal New Source Review (NSR) Permit Rules Reform.	2005–010–116–PR, 2010–008–116–PR.	[b] 3/11/2011–2	1/11/2006	2/1/2006	• Amended 30 TAC 116.12[c], 116.150, 116.151, 116.160, and 116.610; • Repeal of 30 TAC 116.617; and • New 30 TAC 116.121, 116.180, 116.182, 116.184, 116.186, 116.188, 116.190, 116.192, 116.194, 116.196, and 116.198.
One Hour Ozone Major Source Thresholds and Emission Offsets.	2008–030–116–PR ..	3/11/2011–1	2/9/2011	3/3/2011	Amended 30 TAC 101.1[d], 116.12[c], and 116.150
New Source Review (NSR) Reform	2010–008–116–PR ..	3/11/2011–2	2/9/2011	3/3/2011	• Amended 30 TAC 116.12[c], 116.115, 116.180, 116.182, 116.186, 116.188, 116.190, 116.192, and 116.601; • Repealed 30 TAC 116.121; and • New 30 TAC 116.127.
NSR Reform Revisions	2012–015–116–AI ...	([e])	([e])	([e])	• Amended 30 TAC 116.12(23); 116.150(a), (d)(1), and (d)(3); 116.151(a), (c)(1), and (c)(3); 116.180(a)(5); 116.186(b)(9). • Proposed revision submitted for parallel processing.
Letter of explanation and interpretation of the Texas SIP for NSR Reform.	N/A	([f])	([f])	([f])	Letter dated May 3, 2012, from TCEQ to EPA which explains and clarifies TCEQ's interpretation of sections 116.12(22) and 116.186(a), (b)(9), and (c)(2).

[a] Originally submitted June 10, 2005. Following disapproval on September 15, 2010, TCEQ on March 11, 2011–1, resubmitted the provisions that were previously disapproved to ensure that EPA considers the prior submittals in its action on the revisions submitted on March 11, 2011–1.

[b] Originally submitted February 1, 2006. Following disapproval on September 15, 2010, TCEQ on March 11, 2011–2, resubmitted the provisions that were previously disapproved to ensure that EPA considers the prior submittals in its action on the revisions submitted on March 11, 2011–2.

[c] The following provisions of 30 TAC 116.12 were addressed separately in the Texas Infrastructure SIP: The revised title, the introductory paragraph, and paragraphs (14), (17), and (18). These revisions were adopted in the two revisions under Texas Rule Project Nos. 2008–030–116–PR and 2010–008–116–PR, each adopted February 9, 2011, submitted March 11, 2011–1 and March 11, 2011–2.

[d] 30 TAC 101.1 was addressed separately in the Texas Infrastructure SIP.

[e] Proposed by TCEQ on February 22, 2012, for parallel SIP processing.

[f] Letter dated May 3, 2012, with explanation and interpretation of the Texas SIP for NSR Reform.

TABLE 2—SUMMARY OF INDIVIDUAL REVISIONS TO EACH SECTION EVALUATED

Section—Title	Texas rule project No.	Date submitted to EPA	Adopted by State	Comments
30 TAC 116.12—Nonattainment and Prevention of Significant Deterioration Review Definitions.	2005–009–116–AI, 2008–030–116–PR.	[a] 3/11/2011–1	5/25/2005	Amended paragraphs (7), (11), and (13).[d]
	2005–010–116–PR, 2010–008–116–PR.	[b] 3/11/2011–2	1/11/2006	([c d])
	2010–008–116–PR	3/11/2011–2	2/9/2011	Amended paragraphs (3), (20) and (29).[d]
	2012–015–116–AI	([e])	([e])	Amended paragraph (23).
	N/A	([f])	([f])	TCEQ's letter dated May 3, 2012, explains and clarifies TCEQ's interpretation of the definition of ''plant-wide applicability limit'' in paragraph (22).
30 TAC 116.115—General and Special Conditions.	2010–008–116–PR	3/11/2011–2	2/9/2011	Amended subparagraph (b)(2)(F).
30 TAC 116.127—Actual to Projected Actual and Emission Exclusion Test for Emissions.	2005–010–116–PR, 2010–008–116–PR.	[b] 3/11/2011–2	1/11/2006	Submitted as 30 TAC 116.127.
	2010–008–116–PR	3/11/2011–2	2/9/2011	Repealed; Replaced w/new 30 TAC 116.127.
30 TAC 116.150—New Major Source or Major Modification in Ozone Nonattainment Area.	2005–009–116–AI, 2008–030–116–PR.	[a] 3/11/2011–1	5/25/2005	Amended subsections (a); New subsections (b), (c), (d), and (e); Renamed subsection (b) to subsection (f).
	2005–010–116–PR, 2012–015–116–AI.	[b] 3/11/2011–1	1/11/2006	Amended subsections (a), (b), (c), (d), and (e).
	2008–030–116–PR	3/11/2011–1	2/9/2011	Amended subsections (a) and (b); Removed subsection (d); Renamed subsection (e) to subsection (d); Amended subsection (d) as renamed.
	2012–015–116–AI	([e])	([e])	Amended paragraphs (a), (d)(1), and (d)(3).[e]
30 TAC 116.151—New Major Source or Major Modification in Nonattainment Areas Other Than Ozone.	2005–010–116–PR, 2010–008–116–PR.	[b] 3/11/2011–2	1/11/2006	Amended subsections (a), (b), and (c).
	2008–030–116–PR	3/11/2011–1	2/9/2011	Resubmitted with no additional changes.
	2012–015–116–AI	([e])	([e])	Amended paragraphs (a), (c)(1), and (c)(3).[e]
30 TAC 116.180—Applicability	2005–010–116–PR, 2010–008–116–PR.	[b] 3/11/2011–2	1/11/2006	Initial submittal.
	2010–008–116–PR	3/11/2011–2	2/9/2011	Amended subsection (a).
	2012–015–116–AI	([e])	([e])	Amended paragraph (a)(5).[e]
30 TAC 116.182—Plant-Wide Applicability Limit Permit.	2005–010–116–PR, 2010–008–116–PR.	[b] 3/11/2011–2	1/11/2006	Initial submittal.
	2010–008–116–PR	3/11/2011–2	2/9/2011	Amended paragraph (1).
30 TAC 116.184—Application Review Schedule.	2005–010–116–PR, 2010–008–116–PR.	[b] 3/11/2011–2	1/11/2006	Initial submittal resubmitted with no additional changes.
30 TAC 116.186—General and Specific Conditions.	2005–010–116–PR, 2010–008–116–PR.	[b] 3/11/2011–2	1/11/2006	Initial submittal.
	2010–008–116–PR	3/11/2011–2	2/9/2011	Amended subsections (a) and (b).
	2012–015–116–AI	([e])	([e])	Amended paragraph (b)(9).[e]
	N/A	([f])	([f])	TCEQ's letter dated May 3, 2012, explains and clarifies TCEQ's interpretation of paragraphs (a), (b)(9) and (c)(2).
30 TAC 116.188—Plant-Wide Applicability Limit.	2005–010–116–PR, 2010–008–116–PR.	[b] 3/11/2011–2	1/11/2006	Initial submittal.
	2010–008–116–PR	3/11/2011–2	2/9/2011	Amended main paragraph.
30 TAC 116.190—Federal Nonattainment and Prevention of Significant Deterioration Review.	2005–010–116–PR, 2010–008–116–PR.	[b] 3/11/2011–2	1/11/2006	Initial submittal.
	2010–008–116–PR	3/11/2011–2	2/9/2011	Amended subsection (a).
30 TAC 116.192—Amendments and Alterations.	2005–010–116–PR, 2010–008–116–PR.	[b] 3/11/2011–2	1/11/2006	Initial submittal.
	2010–008–116–PR	3/11/2011–2	2/9/2011	Amended subsection (c).
30 TAC 116.196—Renewal of a Plant-Wide Applicability Limit Permit.	2005–010–116–PR, 2010–008–116–PR.	[b] 3/11/2011–2	1/11/2006	Initial submittal resubmitted with no additional changes.
30 TAC 116.198—Expiration and Voidance.	2005–010–116–PR, 2010–008–116–PR.	[b] 3/11/2011–2	1/11/2006	Initial submittal resubmitted with no additional changes.

[a] Originally submitted June 10, 2005. Following disapproval on September 15, 2010, TCEQ on March 11, 2011–1, resubmitted the provisions that were previously disapproved to ensure that EPA considers the prior submittals in its action on the revisions submitted on March 11, 2011–1).

[b] Originally submitted February 1, 2006. Following disapproval on September 15, 2010, TCEQ on March 11, 2011–2, resubmitted the provisions that were previously disapproved to ensure that EPA considers the prior submittals in its action on the revisions submitted on March 11, 2011–2.

[c] In the February 1, 2006, SIP submittal (resubmitted March 11, 2011), 30 TAC 116.12 included the following revisions:
• The addition of new paragraphs (3)–(4), (7)–(8), (13)–(14), (16), (22)–(26), (29)–(31), (33)–(34), and (36).
• The following paragraphs were renumbered, consistent with the new paragraphs identified above, as follows:
—Existing paragraphs (3)–(4) to paragraphs (5)–(6), respectively;
—Existing paragraphs (5)–(8) to paragraphs (9)–(12), respectively;
—Existing paragraph (9) to paragraph (15);
—Existing paragraphs (10)–(14) to paragraphs (17)–(21), respectively;
—Existing paragraphs (15)–(16) to paragraphs (27)–(28), respectively;
—Existing paragraph (17) to paragraph (32); and
—Existing paragraph (18) to paragraph (35).
• The following existing paragraphs, as renumbered, were further revised: (1), (11), (12), (17), (18), and (20).
[d] This includes portions of 30 TAC 116.12 that were separately approved in the Texas Infrastructure SIP in which EPA approved. See 76 FR 81371, December 28, 2011. In this action, EPA approved the following: The revised title of 30 TAC 116.12; the introductory paragraph to 30 TAC 116.12; the definition of ''federally regulated NSR pollutant'' in 30 TAC 116.12(14), the definition of ''major stationary source'' in 30 TAC 116.12(17), and the definition of ''major modification'' in 30 TAC 116.12(18).''
[e] Proposed by TCEQ on February 22, 2012, for parallel SIP processing.
[f] Letter dated May 3, 2012, with explanation and interpretation of the Texas SIP for NSR Reform.

C. Why are we ''parallel processing'' and how does it work?

On February 22, 2012, Texas proposed revisions to 30 TAC 116.12(23); 116.150(a), (d)(1), and (d)(3); 116.151(a), (c)(1), and (c)(3); 116.180(a)(5); and 116.186(b)(9). In its letter dated May 3, 2012, TCEQ requested parallel processing of these proposed revisions with our processing of the two SIP revisions submitted March 11, 2011. Texas requested parallel processing to expedite the processing of its submitted and proposed revisions.

Parallel processing means that EPA proposes action on a state rule before it becomes final under state rule. See 40 CFR part 51, Appendix V, section 2.3. Under parallel processing, EPA takes final action on the State's proposal if the State's final submission is adopted substantially unchanged from the submission on which this proposed rulemaking is based, or if significant changes in the final state submission are anticipated and adequately described in EPA's proposed rulemaking, or result from needed corrections determined by the State to be necessary through review of issues described in EPA's proposed rulemaking. Final rulemaking action by EPA will occur only after the SIP revision has been fully adopted by Texas and submitted formally to EPA for incorporation into the SIP. A further discussion of these rules that we are parallel processing can be found in later sections.

II. What Action is EPA proposing to take on the antibacksliding Major NSR SIP requirements for the one-hour ozone NAAQS?

A. Background

On September 15, 2010, EPA disapproved provisions submitted June 10, 2005, and February 1, 2006, that relate to the antibacksliding Major NSR SIP requirements for the one-hour ozone NAAQS. Specifically, EPA disapproved 30 TAC 116.12(18)[3] and 116.150(d), because these submitted rules do not comply with the CAA as interpreted by the Court in *South Coast Air Quality Management District, et al.* v. *EPA,* 472 F.3d 882 (DC Cir. 2006), reh'g denied 489 F.3d 1245 (2007) (clarifying that the vacatur was limited to the issues on which the court granted the petitions for review). As explained below, this opinion does not require further action by EPA with respect to NSR. See 75 FR 56424, at 56429–56431.

B. What were the grounds for the September 15, 2010, disapproval?

On July 18, 1997, EPA promulgated a new NAAQS for ozone based upon eight-hour average concentrations. The eight-hour averaging period replaced the previous one-hour averaging period, and the level of NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (62 FR 38865). On April 30, 2004 (69 FR 23951), EPA published a final Phase 1 Implementation Rule that addressed key elements related to implementation of the 1997 eight-hour ozone NAAQS, including, but not limited to: (1) Revocation of the one-hour NAAQS; and (2) How anti-backsliding principles will ensure continued progress toward attainment of the 1997 eight-hour ozone NAAQS. We codified the anti-backsliding provisions governing the transition from the revoked one-hour ozone NAAQS to the 1997 eight-hour ozone NAAQS in 40 CFR 51.905(a). The one-hour ozone major nonattainment NSR SIP requirements indicated that certain one-hour ozone standard requirements were not part of the list of anti-backsliding requirements provided in 40 CFR 51.905(f).

On December 22, 2006, the DC Circuit vacated the Phase 1 Implementation Rule in its entirety in the *South Coast* decision. EPA requested rehearing and clarification of the ruling; and on June 8, 2007, the Court clarified that it was vacating the rule only to the extent that it had upheld petitioners' challenges. Thus, the Court vacated the provisions in 40 CFR 51.905(e) that waived obligations under the revoked one-hour standard for NSR. The court's ruling, therefore, maintains major nonattainment NSR applicability thresholds and emission offset ratios pursuant to classifications previously in effect for areas designated nonattainment for the one-hour ozone NAAQS.

On June 10, 2005, and February 1, 2006, Texas submitted SIP revisions to 30 TAC 116.150 which relate to the transition from the major nonattainment NSR requirements applicable for the one-hour ozone NAAQS to implementation of the major nonattainment NSR requirements applicable to the 1997 eight-hour ozone NAAQS. Texas' revisions to the introductory paragraph to subsection (d) of 30 TAC 116.150, effective as state law on June 15, 2005, provided that for ''the Houston-Galveston-Brazoria, Dallas-Fort Worth, and Beaumont-Port Arthur eight-hour ozone nonattainment areas, if the United States Environmental Protection Agency promulgates rules requiring new source review permit applications in these areas to be evaluated for nonattainment new source review according to the area's one-hour standard classification,'' then ''each application will be evaluated according to that area's one-hour standard classification'' and ''* * * the de minimis threshold test (netting) is required for all modifications to existing major sources of VOC or NO_X in that area * * *'' The introductory paragraph of 30 TAC 116.150(d) adds a new requirement for an affirmative

[3] In a separate action, EPA approved the submitted revisions to 30 TAC 116.12(18)—definition of major modification—in the Texas Infrastructure SIP. We approved the Texas Infrastructure SIP on December 28, 2011 (76 FR 81371). Accordingly, this evaluation only addresses the submitted revisions to 30 TAC 116.150(d). All references, herein, to the portions of 30 TAC 116.12 that were approved in the Texas Infrastructure SIP are for informational purposes only.

regulatory action by EPA on the reinstatement of the one-hour ozone NAAQS major NNSR requirements before the legally applicable major NNSR requirements under the one-hour ozone standard will be implemented in the Texas one-hour ozone nonattainment areas.

The approved Texas major NNSR SIP did not require such an affirmative regulatory action by EPA before the one-hour ozone major NNSR requirements come into effect in the Texas one-hour ozone nonattainment areas. The SIP had stated at 30 TAC 116.12(11)[4] (Footnote 1 under Table I) that ''Texas nonattainment area designations are specified in 40 Code of Federal Regulations § 81.344.'' That section included designations for the one-hour standard as well as the eight-hour standard. Moreover, the submitted revisions to 30 TAC 116.150(d) did not comport with the *South Coast* decision as discussed above.

The court opinion maintains the lower applicability thresholds and more stringent offset ratios for a one-hour ozone nonattainment area whose classification under that standard was higher than its nonattainment classification under the eight-hour standard. In the June 10, 2005, and February 1, 2006, submitted rule revisions, the lower applicability thresholds and more stringent offset ratios for a classified one-hour ozone nonattainment area were not required in a Texas one-hour ozone nonattainment area unless and until EPA promulgated a rulemaking implementing the *South Coast* decision. See 75 FR 56424, at 56429 and 56431.

C. What did Texas submit to address the grounds for disapproval?

On March 11, 2011–1, the TCEQ submitted the following amendments to 30 TAC 116.150:[5]

- The removal of paragraphs (a)(1) through (a)(2) and subsection (d); and
- Revised the introductory paragraph to subsection (a) and added new paragraphs (a)(1) through (a)(4) which clarify that permitted facilities in areas that were designated nonattainment for the one-hour ozone standard are subject to the major source thresholds and emission offset requirements of the one-hour ozone standard unless one of the four exceptions identified in 30 TAC 116.150(a) apply. TCEQ amended 30 TAC 116.150(a) to add a requirement for continued applicability of NNSR until: (1) EPA has made a finding of attainment; (2) EPA has approved the removal of NNSR requirements from the area; (3) EPA has determined that the Prevention of Significant Deterioration (PSD) requirements apply in the area; or (4) NNSR is no longer required for purposes of antibacksliding.

As the result of EPA's comments received on the proposal of these amendments the TCEQ changed 30 TAC 116.150(a)(1) through (a)(4) to make clear that the conditions on which these exceptions are based must exist on the date of issuance of the permit.

The TCEQ also removed 30 TAC 116.150(d) from the rule. Subsection (d) contained language that indicated that the EPA must complete rulemaking before NSR applications are evaluated according to their one-hour classification. As stated above, the *South Coast* decision is self-implementing, did not require rulemaking by the EPA to be effective, and NSR applications should be evaluated based upon one-hour classifications if they are more stringent than an area's eight-hour classification. TCEQ also renumbered the remainder of 30 TAC 116.150 to reflect the removal of 30 TAC 116.150(d) and minor changes to references in 30 TAC 116.150(b) to reflect the renumbering. TCEQ also changed 30 TAC 116.150(e) to reflect changes in a concurrent rulemaking in Chapter 101.[6]

TCEQ states that these changes ensure that when changes are made to maintenance areas and nonattainment areas as a result of Federal action, these rules will not be rendered incorrect. Also, for the one-hour ozone NAAQS, the designations and classifications in 40 CFR Part 81 were retained by EPA for purposes of anti-backsliding (See 70 FR 44470, August 3, 2005). The TCEQ also removed the language ''to prevent anti-backsliding'' and replaced it with ''for the purposes of anti-backsliding'' since the intent of the rule is to prevent backsliding and promote anti-backsliding.

D. What is EPA's evaluation of the submitted SIP revision to address the grounds for disapproval?

The submitted revisions to 30 TAC 116.150 now meet the Federal requirements regarding antibacksliding under *South Coast.* The submitted revision to 30 TAC 116.150(a), as discussed above, ensures that TCEQ will continue to require compliance with the NNSR requirements of the one-hour ozone standard until: (1) EPA has made a finding of attainment; (2) EPA has approved the removal of NNSR requirements from the area; (3) EPA has determined that PSD requirements apply in the area; or (4) NNSR is no longer required for purposes of antibacksliding.

The TCEQ also removed 30 TAC 116.150(d) from the rule. Subsection (d) had provided that the permitting requirements for the one-hour ozone nonattainment areas would not apply unless EPA later promulgates rules that reinstate the permitting requirements for the one-hour ozone standard. The removal of subsection (d) reinstates the requirement to follow the NNSR requirements of the one-hour ozone standard unless the EPA makes any of the findings described in subsection (a)(1) through (a)(4), as described above.

These revisions satisfy the requirements of *South Coast* as discussed above and address EPA concerns related to Anti-Backsliding Major NSR SIP Requirements for the one-hour Ozone NAAQS. Accordingly, these revisions satisfy the requirements for SIP approval. EPA proposes to approve the submitted revisions to 30 TAC 116.150 as described herein.

III. What action is EPA proposing to take on the Major Nonattainment NSR SIP requirements for the 1997 eight-hour ozone NAAQS?

A. Background

On September 15, 2010, EPA disapproved revisions to 30 TAC 116.150(a) submitted June 10, 2005, and February 1, 2006. EPA disapproved this rule because it provided that an applicability determination for a Major NNSR permit is to be based upon the date of administrative completeness, rather than the date of permit issuance. This would allow more sources to avoid the Major NSR requirements where there is a nonattainment designation between the date of administrative completeness and the date of issuance.

[4] The currently approved 30 TAC 116.12(11) was renumbered to 30 TAC 112.12(18) in the February 1, 2006, submittal. This renumbering of, and revisions to, the definition, as resubmitted March 11, 2011–1, was approved December 28, 2011, in our action on the Texas Infrastructure SIP.

[5] TCEQ also submitted revisions to 30 TAC 116.12(18)(A)(1) concerning major modification and 30 TAC 101.1 to address this ground for SIP disapproval. EPA addressed these rules separately in the Texas Infrastructure SIP which contains the evaluation of the revisions to these sections. This action only addresses the revisions to 30 TAC 116.150 that were submitted to address this ground for disapproval.

[6] The SIP revision submitted on March 11, 2011–1, includes a nonsubstantive revision to 30 TAC 116.150(e) which provides that the requirements for nitrogen oxides (NO_X) do not apply in the El Paso nonattainment area. The revision removes the reference to areas as defined in 30 TAC 101.1 and replaced it with the area as defined in 40 CFR part 81. In this SIP submittal, Texas also made similar changes to 30 TAC 101.1 to refer to the areas as defined in 40 CFR part 81. EPA approved these revisions to 30 TAC 101.1 in its action on the Texas Infrastructure SIP on December 28, 2011.

B. What were the grounds for the September 15, 2010, disapproval?

EPA interprets its Major NSR SIP rules to require that an applicability determination regarding whether Major NSR applies for a pollutant should be based upon the designation of the area in which the source is located on the date of issuance of the Major NSR permit. EPA also interprets the Act and its rules to require that if an area is designated nonattainment on the date of issuance of a Major NSR permit, then the Major NSR permit must be an NNSR permit, not a PSD permit. If the area is designated attainment/unclassifiable on the date of issuance of a Major NSR permit, then under EPA's interpretation of the Act and its rules, the Major NSR permit must be a PSD permit. See sections 160, 165, 172(c)(5) and 173 of the Act; and 40 CFR 51.165(a)(2)(i) and 51.166(a)(7)(i). EPA's interpretation of these statutory and regulatory requirements is guided by the memorandum issued March 11, 1991, and titled ''New Source Review (NSR) Program Transitional Guidance,'' by John S. Seitz, Director, Office of Air Quality Planning and Standard (1991 Transitional Guidance).[7]

The revisions to 30 TAC 116.150(a), submitted June 10, 2005, and February 1, 2006, were not clear as to when and where the applicability date will be set by the date the application is administratively complete and when and where the applicability date will be set by the issuance date of the authorization. The rule, adopted and submitted in 2005, relied on the date of administrative completeness of a permit application, not the date of permit issuance and applied to NSR authorizations that are administratively complete after June 15, 2004 (the effective date of eight-hour ozone nonattainment designations). The submitted 2006 rule added the date of permit issuance. Unfortunately, the 2006 rule introduced a bifurcated structure which created vagueness rather than clarity. The effective date of that new bifurcated structure was February 1, 2006. It was unclear whether this revision meant that the permit issuance date was to be used in existing nonattainment areas designated nonattainment for ozone before and up through February 1, 2006. Thus, the proposed revision lacked clarity on its face and was therefore not enforceable.

Furthermore, to the extent that the date of application completeness was used in certain instances to establish the applicability date for NNSR requirements, such use is contrary to EPA's interpretation of the Act and the governing EPA regulations, as discussed above.

Thus, based upon the above and in the absence of any explanation by the State, EPA disapproved the SIP revision submittals for not meeting the Major NNSR SIP requirements for the 1997 eight-hour ozone standard. See 75 FR 56424, at 56431–56432 and 56433.

C. What did Texas submit to address the grounds for disapproval?

On March 11, 2011–1, the TCEQ amended 30 TAC 116.150(a) to apply its requirements as of the date of issuance of the permit.

D. What is EPA's evaluation of the submitted SIP revision to address the grounds for disapproval?

The submitted revision to 30 TAC 116.150 now applies its requirements as of the date of issuance of the permit. This amendment satisfies the requirements of sections 160, 165, 172(c)(5), and 173 of the Act; and 40 CFR 51.165(a)(2)(i) and 51.166(a)(7)(i). It also meets EPA's interpretation of these statutory and regulatory requirements as guided by the 1991 Transitional Guidance. These revisions satisfy the requirements for SIP approval. Accordingly, EPA proposes to approve the submitted revisions to 30 TAC 116.150 as described above.

IV. What action is EPA proposing to take on the Major NSR Reform Program with Plantwide Applicability Limit (PAL) provisions?

A. Background

On September 15, 2010, EPA disapproved provisions of the SIP revisions submitted February 1, 2006, which relate to the Major NSR Reform Program with Plantwide Applicability Limit (PAL) provisions. The reasons for this disapproval are described below.

B. EPA's Evaluation of the Grounds for Disapproval and Texas' Revisions To Address These Grounds

1. The February 1, 2006, SIP Submittal Lacked a Provision That Limits Applicability of a PAL to an Existing Major Stationary Source

a. What were the grounds for the September 15, 2010, disapproval?

The February 1, 2006, submittal failed to limit the applicability of PALs to existing major stationary sources, as required under 40 CFR 51.165(f)(1)(i) and 40 CFR 51.166(w)(1)(i). In EPA's November 2002 Technical Support Document for the revised Major NSR Regulations,[8] we state on pages I–7–27 and 28 that actuals PALs are available only for existing major stationary sources, because actuals PALs are based on a source's actual emissions. Without at least 2 years of operating history, a stationary source has not established actual emissions upon which to base an actuals PAL. This is consistent with EPA's longstanding interpretation of the Act. Therefore, an actuals PAL can be obtained only for an existing major stationary source.[9] [10] See 75 FR 56424, at 56433, 56435, and 56438.

b. What did Texas submit to address the grounds for disapproval?

On March 11, 2011–2, TCEQ submitted a revision to 30 TAC 116.180 that added a new paragraph (a)(5) which restricted the issuance of PAL permits to existing major stationary sources. This revision only addressed the ground for disapproval for nonattainment pollutants but failed to provide a corresponding requirement for addressing this ground in the case of PSD pollutants.

In the State's February 22, 2012, proposed rulemaking parallel reviewed by EPA for this proposal action, the TCEQ proposed two revisions to paragraph (a)(5) as follows: (1), TCEQ proposed to correct the citation to the Federal definition of ''major stationary source'' in 40 CFR 51.165 (applicable to nonattainment pollutants); and (2) TCEQ proposed to add a citation of the definition of ''major stationary source'' in 40 CFR 51.166 (applicable to PSD pollutants).

c. What is EPA's evaluation of the submitted SIP revision to address the grounds for disapproval?

As described above, the revisions to 30 TAC 116.180(a)(5) submitted March 11, 2011–2, and the revisions proposed February 22, 2012, and reviewed by EPA for this proposal action revise this section to provide that a PAL can only

[7] You can access the 1991 Transitional Guidance at: *http://www.epa.gov/ttn/nsr/gen/nstrans.pdf.*

[8] The Technical Support Document for the 2002 NSR rule making is available at: *http://www.epa.gov/air/nsr/documents/nsr-tsd_11-22-02.pdf.*

[9] A PAL Permit at an existing major stationary source may include individual emissions units that have operated for less than two years (i.e., new emissions units). For new emissions units on which actual construction began after the 24-month baseline period, the PAL would include the potential to emit of new emissions units. See 40 CFR 51.165(f)(6)(ii) and 51.166(w)(2)(ii).

[10] Moreover, the development of an alternative method to provide new major stationary sources with the option of obtaining a PAL based on allowable emissions was foreclosed by the Court in *New York* v. *EPA,* 413 F.3d 3 at 38–40 (DC Cir. 2005) (''New York I'') (holding that the Act since 1977 requires a comparison of existing actual emissions before the change and projected actual (or potential emissions) after the change in question is required).

be issued for an existing major stationary source as defined in 40 CFR 51.165(a)(1)(iv)(A) and 40 CFR 51.166(b)(1). These revisions fully address this ground for disapproval of the submitted PAL Program. Accordingly, EPA proposes to approve these amendments to 30 TAC 116.180(a)(5) as submitted March 11, 2011–2, and the proposed amendments to this rule proposed February 22, 2012.

2. The February 1, 2006, SIP Submittal Had No Provisions That Relate to PAL Re-Openings

a. What were the grounds for the September 15, 2010, disapproval?

The February 1, 2006, SIP submittal had no provisions that relate to PAL re-openings, as required by 40 CFR 51.165(f)(8)(ii) and 51.166(w)(8)(ii). The Federal rules provide for PAL re-openings for the following: correction of typographical/calculation errors in setting the PAL; reduction of the PAL to create creditable emission reductions for use as offsets; reductions to reflect newly applicable Federal requirements (for example, New Source Performance Standards (NSPS)) with compliance dates after the PAL; PAL reduction consistent with any other requirement, that is enforceable as a practical matter, and that the State may impose on the major stationary source under the SIP; and PAL reduction if the reviewing authority determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager for which information is available to the general public. Texas had submitted no demonstration, as required for a customized Major NSR SIP revision submittal, that the lack of provisions for PAL re-openings is at least as stringent as the Federal PAL Program SIP requirements. See 75 FR 56424, at 56433, 56435–56436, and 56438.

b. What did Texas submit to address the grounds for disapproval?

In revisions submitted March 11, 2011–2, TCEQ addressed this issue by the addition of 30 TAC 116.192(c) which provides that during the PAL effective period the Executive Director shall reopen a PAL: to correct typographical calculation errors made in setting the PAL or to reflect a more accurate determination of emissions used to establish a PAL; to decrease the PAL limit that the owner or operator of a major stationary source creates to establish creditable emissions reductions that meet the requirements of 40 CFR 51.165(a)(3)(ii) for use as offsets; and to revise the PAL to reflect an increase in the PAL provided the owner or operator complies with the requirements of 40 CFR 52.21(aa)(11) and 51.165(f)(11).

This revision also provides that the Executive Director may reopen a PAL: to revise the PAL to reflect newly applicable Federal requirements (for example, NSPS) with compliance dates after the PAL effective date; to revise the PAL to be consistent with any other requirement that is enforceable as a practical matter and that the State may impose on the major stationary source under the SIP; or to reduce the PAL if the reviewing authority determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager for which information is available to the general public.

c. What is EPA's evaluation of the submitted SIP revision to address the grounds for disapproval?

As discussed above, the revisions submitted March 11, 2011–2 to 30 TAC 116.192(c) and TCEQ's evaluation of these revisions meet the requirements of 40 CFR 51.165(f)(8)(ii) and 51.166(w)(8)(ii). Accordingly, EPA proposes to approve the revisions to 30 TAC 116.192(c) submitted March 11, 2011–2.

3. There Was No Mandate That Failure To Use a Monitoring System That Meets the Requirements in the PAL Renders the PAL Invalid

a. What were the grounds for the September 15, 2010, disapproval?

The rules submitted February 1, 2006, had no provision requiring that the failure to use a monitoring system that meets the requirements for a PAL renders the PAL invalid, as required by 40 CFR 51.165(f)(12)(i)(D) and 51.166(w)(12)(i)(d). See 75 FR 56424, at 56433 and 56438.

b. What did Texas submit to address the grounds for disapproval?

On March 11, 2011–2, TCEQ submitted revisions to 30 TAC 116.186 that added a new paragraph (b)(9) to provide that ''[f]ailure to use a monitoring system that meets the minimum requirements of this section is a violation of the PAL permit.''

In the State's February 22, 2012, proposed parallel rulemaking parallel reviewed by EPA for this proposal action, TCEQ proposed revisions to paragraph (b)(9) to remove the text ''is a violation of the PAL permit'' and replaced that text with ''renders the PAL invalid.''.

c. What is EPA's evaluation of the submitted SIP revision to address the grounds for disapproval?

The revision submitted March 11, 2011–2, to add 30 TAC 116.186(b)(9), differed from the Federal requirements at 40 CFR 51.165(f)(12)(i)(D) and 51.166(w)(12)(i)(d). The submitted rule provided that failure to use a monitoring system that meets the minimum requirements of this section is a violation of the PAL permit, whereas the Federal requirements provide that such failure renders the PAL permit invalid. By providing that such failure to use a required monitoring system is simply a violation of the PAL permit, the source retained its PAL notwithstanding the enforcement liability that could result from such failure to use the required monitoring and did not comport with the Federal requirement that provides that failure to use the required monitoring renders the PAL invalid. As submitted March 11, 2011–2, paragraph (b)(9) does not meet the requirements for SIP approval. However, the revision proposed February 22, 2012, would amend paragraph (b)(9) to state that failure to use the required monitoring would render the PAL permit invalid.

In the State's February 22, 2012, proposed rulemaking parallel reviewed by EPA for this proposal action, TCEQ proposes to amend 30 TAC 116.186(b)(9) to remove the language that failure to use the required monitoring is a violation of PAL permit and to replace it with language that provides that such failure renders the PAL Permit invalid. The State's proposed February 22, 2012, rulemaking would meet the Federal requirements at 40 CFR 51.165(f)(12)(i)(D) and 51.166(w)(12)(i)(d). Accordingly, EPA proposes to approve 30 TAC 116.186(b)(9) as submitted March 11, 2011–2, and the revision proposed to this rule on February 22, 2012.

4. The February 1, 2006, Submittal of 30 TAC 116.182 and 116.186 Provided for an Emission Cap That May Not Account for All of the Emissions of a Pollutant at a Major Stationary Source

a. What were the grounds for the September 15, 2010, disapproval?

The February 1, 2006, submittal at 30 TAC 116.182 and 116.186 provided for an emissions cap that may not account for all of the emissions of a pollutant at the major stationary source. Texas required the owner or operator to

submit a list of all facilities to be included in the PAL, such that not all of the facilities at the entire major stationary source may be specifically required to be included in the PAL. See 30 TAC 116.182(1) and 116.186(a). However, the Federal rules require the owner or operator to submit a list of all emissions units at the source. See 40 CFR 51.165(f)(3)(i) and 40 CFR 51.166(w)(3)(i). The Texas submittal was unclear as to whether the PAL would apply to all of the emission units at the entire major stationary source and therefore appeared to be less stringent than the Federal rules. In the absence of any demonstration from the State, EPA disapproved 30 TAC 116.186 and 30 TAC 116.182(1) as not meeting the revised Major NSR SIP requirements. See 75 FR 56424, at 56433–56434 and 56438.

b. What did Texas submit to address the grounds for disapproval?

On March 11, 2011–2, Texas submitted the following revisions to address these grounds for disapproval:

30 TAC 116.180, Applicability. The following revisions were submitted:

- Removal of the term ''account site'' from 30 TAC 116.180(a)(1) and replacement with the term ''existing major stationary source'' to make this requirement more consistent with Federal requirements. Similar changes were made to 30 TAC 116.180(a)(3) and (4).
- The term ''facility'' as defined in the Texas Clean Air Act (TCAA) was defined to correspond Federal term ''emissions unit,'' by adding the language ''or emissions unit'' whenever the term facility is used (i.e., 30 TAC 116.180(a)(3), (b) and (c)).[11]
- Additionally, the proposed revision's use of the phrase ''at a major stationary source'' and the term ''emissions unit'' in a corresponding fashion in this section and elsewhere in the Commission's PAL rules was clarified, by adding the phrase ''at a major stationary source'' to each instance of the term ''emissions unit.'' This removed any ambiguity by clarifying that both terms are being used interchangeably and in a manner that is consistent with EPA's use of the term in NSR permitting.

30 TAC 116.182 Plant-Wide Applicability Limit Permit Application. To address EPA's concern that 30 TAC 116.182(1) might not require all facilities to be included in the PAL, the TCEQ amended 30 TAC 116.182(1) by adding the phrase ''at a major stationary source'' where appropriate to make clear that PALs are applicable to major sources only. Additionally, as the result of comments in the EPA's final disapproval (75 FR 56424, September 15, 2010), the TCEQ added language to require that all emission units at the major stationary source that emit the PAL pollutant be included in the PAL permit application.

30 TAC 116.186 General and Special Conditions. To address EPA's concern that 30 TAC 116.186 might not require all facilities to be included in the PAL, the TCEQ amended 30 TAC 116.186 by adding the language ''or emissions unit'' where the term facility is used in subsection (a) and paragraph (b)(1) and changing the word ''Federal'' to ''major'' in paragraph (b)(1) to clarify the type of NSR referenced in this paragraph. Also, the TCEQ added the phrase ''at a major stationary source'' where appropriate to make clear that PALs are applicable to major stationary sources only. Also, as the result of comments in the EPA's final disapproval, the TCEQ added language to require that all emission units at the major stationary source that emit the PAL pollutant be included in the PAL permit.

c. What is EPA's evaluation of the submitted SIP revision to address the grounds for disapproval?

As discussed above, the revisions submitted March 11, 2011–2, meet the requirements of 40 CFR 51.165(f)(3)(i) and 51.166(w)(3)(i). Accordingly, EPA is proposing to approve these revisions to 30 TAC 116.180, 116.182, and 116.186.

5. The February 1, 2006, Submittal of Baseline Actual Emissions Did Not Provide That Emissions Be Calculated in Terms of the Average Rate, in Tons per Year

a. What were the grounds for the September 15, 2010, disapproval?

The Federal definition of the ''baseline actual emissions'' provides that these emissions must be calculated in terms of ''the *average* rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period.'' See 40 CFR 51.165(a)(1)(xxxv)(A), (B), (D), and (E) and 51.166(b)(47)(i), (ii), (iv), and (v). Emphasis added. Texas' February 1, 2006, submittal of the definition of ''baseline actual emissions'' at 30 TAC 116.12(3)(A), (B), (D), and (E), differed from the Federal definition by providing that the baseline shall be calculated as ''the rate, in tons per year at which the unit actually emitted the pollutant during any consecutive 24-month period.'' The definition omits reference to the ''average rate.'' The definition differed from the Federal definition but the State failed to provide a demonstration showing how the different definition is at least as stringent as the Federal definition. Therefore, EPA disapproved the different definition of ''baseline actual emissions'' found at 30 TAC 116.12(3) as not meeting the revised Major NSR SIP requirements. On the same grounds for lacking a demonstration, EPA disapproved 30 TAC 116.182(2) that refers to calculations of the baseline actual emissions for a PAL, as not meeting the revised Major NSR SIP requirements. See 75 FR 56424, at 56434–56435, and 56438.

b. What did Texas submit to address the grounds for disapproval?

On March 11, 2011–2, the TCEQ submitted revisions to the definition of ''baseline actual emissions'' at 30 TAC 116.12(3)(A), (B), (D), and (E), that specify that the rate is an average rate.

c. What is EPA's evaluation of the submitted SIP revision to address the grounds for disapproval?

As described above, the submitted change to the definition of ''baseline actual emissions'' in 30 TAC 116.12(3)(A), (B), (D), and (E), to specify that the rate is an average rate, now meets the Federal requirements under 40 CFR 51.165(a)(1)(xxxv)(A), (B), (D), and (E) and 51.166(b)(47)(i), (ii), (iv), and (v). Accordingly, EPA is proposing to approve the revisions to 30 TAC 116.12(3)(A), (B), (D), and (E). For further information see the TSD for this proposal.[12]

6. The State Failed To Include Specific Definitions of Continuous Emissions Monitoring System (CEMS), Continuous Emissions Rate Monitoring System (CERMS), Continuous Parameter Monitoring System (CPMS), and Predictive Emissions Monitoring System (PEMS)

a. What were the grounds for the September 15, 2010, disapproval?

The TCEQ failed to include the following specific monitoring definitions in the March 11, 2011–2, submittal: ''continuous emissions monitoring system (CEMS)'' as defined in 40 CFR 51.165(a)(1)(xxxi) and 51.166(b)(43); ''continuous emissions rate monitoring system (CERMS)'' as defined in 40 CFR 51.165(a)(1)(xxxiv)

[11] See section V.B.1 of this preamble for further discussion on how TCEQ addresses the use of ''facility'' for ''emissions unit'' in its Non-PAL NNSR Program.

[12] A similar issue in the Non-PAL Program is addressed in section V.B.3 of this preamble.

and 51.166(b)(46); ''continuous parameter monitoring system (CPMS)'' as defined in 40 CFR 51.165(a)(1)(xxxiii) and 51.166(b)(45); and ''predictive emissions monitoring system (PEMS)'' as defined in 40 CFR 51.165(a)(1)(xxxii) and 51.166(b)(44). All of these definitions concerning the monitoring systems in the revised Major NSR SIP requirements are essential for the enforceability of and providing the means for determining compliance with a PALs program. Additionally, whereas here, a State has made a SIP revision that does not contain definitions that are required in the revised Major NSR SIP program, EPA may approve such a revision only if the State specifically demonstrates that, despite the absence of the required definitions, the submitted revision is more stringent, or at least as stringent, in all respects, as the Federal program. See 40 CFR 51.165(a)(1) (non-attainment SIP approval criteria); 40 CFR 51.166(b) (PSD SIP definition approval criteria). Texas did not provide such a demonstration. Therefore, EPA disapproved the submitted rule based on the lack of these definitions as not meeting the revised Major NSR SIP requirements. See 75 FR 56424, at 56434 and 56438.

b. What did Texas submit to address the grounds for disapproval?

On March 11, 2011–2, TCEQ submitted revisions to 30 TAC 116.186(c)(1) which provided that the definitions of CEMS, CERMS, CPMS, and PEMS are the same as provided in 40 CFR 51.165.

c. What is EPA's evaluation of the submitted SIP revision to address the grounds for disapproval?

The revisions described above incorporate the Federal definitions of CEMS, CERMS, CPMS, and PEMS into the State's PAL Program and therefore meet the applicable Federal requirements. Accordingly, EPA proposes to approve the revisions to 30 TAC 116.186(c)(1) which incorporates these definitions.

C. Other Concerns With the Major NSR Reform Program With Plantwide Applicability Limit (PAL) Provisions

1. Submittal of 30 TAC 116.12(23)—Definition of ''Plant-Wide Applicability Limit Effective Date''

a. Background

On February 1, 2006, Texas submitted the definition of ''plant-wide applicability limit effective date'' at 30 TAC 116.12(23). On September 15, 2010 (75 FR 56424) EPA disapproved the Texas NSR Reform SIP revisions submitted February 1, 2006, including 30 TAC 116.12(23). On March 11, 2011–2, Texas resubmitted 30 TAC 116.12(23) without additional changes.

In the State's February 22, 2012, proposed rulemaking parallel reviewed by EPA for this proposal action, TCEQ proposed to revise the definition to remove language that references the date that a Flexible Permit was issued. Since PAL Permits and Flexible Permits are addressed by two different sets of rules in Chapter 116, it is inappropriate to reference Flexible Permits in the definition of ''plant-wide applicability limit effective date.''

b. What is EPA's evaluation of the submitted SIP revision of 30 TAC 116.12(23)?

The definition of ''plant-wide applicability limit effective date'' at 30 TAC 116.12(23), submitted February 1, 2006, and resubmitted March 11, 2011–2, includes a provision that such effective date for a PAL established in an existing Flexible Permit is the date that the Flexible Permit was issued. Because EPA disapproved Texas' Flexible Permit Program on July 15, 2010 (75 FR 41312), this provision appears to say that a source with a Flexible Permit could get a SIP-approved PAL that could retroactively recognize a prior Flexible Permit that should not have been issued.

The State's proposed February 22, 2012, rulemaking reviewed by EPA for this proposal action would remove the reference to Flexible Permits from the definition of ''plant-wide applicability limit effective date'' at 30 TAC 116.12(23). This will address these concerns. Accordingly, EPA proposes to approve the definition of ''plant-wide applicability limit effective date'' in 30 TAC 116.12(23) as submitted March 11, 2011–2, and the amendments proposed February 22, 2012, to remove the language that refers to Flexible Permits.

2. Submittal of 30 TAC 116.12(22)—Definition of ''Plant-Wide Applicability Limit''—and 30 TAC 116.186(a)

a. Background

The TCEQ submitted this definition on March 11, 2011–2. This definition does not specifically provide that the emission limitation in a PAL must be ''enforceable as a practical matter'' or ''practical enforceability'' as required by 40 CFR 51.165(f)(2)(v) and 51.166(w)(2)(v). Similarly, the provisions of 30 TAC 116.186(a), submitted on March 11, 2011–2, likewise do not specifically provide that the emission limitation in a PAL must be ''enforceable as a practical matter'' as required by 40 CFR 51.165(f)(4)(i)(A) and 51.166(w)(4)(i)(a). The omission of the requirement that the PAL be enforceable as a practical matter raises the question of how the rules meet Federal enforceability requirements.

b. What is EPA's evaluation of the submitted revisions to 30 TAC 116.12(22) and 116.186(a)?

The 2002 NSR Reform rule discusses practical enforceability in the preamble of its NSR Reform rule. Here we say that ''[p]ractical enforceability for a source-specific permit will be achieved if the permit's provisions specify: (1) A technically accurate limitation and the portions of the source subject to the limitation; (2) the time period for the limitation (hourly, monthly, and annual limits such as rolling annual limits); and (3) the method to determine compliance, including appropriate monitoring, recordkeeping, and reporting.'' See 67 FR 80186, at 80190–80191, December 31, 2002. For PALs, EPA discussed the monitoring, recordkeeping, and reporting requirements for a PAL and characterized these requirements as addressing a number of issues associated with practical enforceability of PALs. See 67 FR 80186, at 80211–80214.

EPA's interpretation of the term ''practical enforceability'' in the context of the CAA is discussed in the guidance memorandum *Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act),* by John S. Seitz, Director, Office of Air Quality Planning and Standards, and Robert I. Heuvelen, Director, Office of Regulatory Enforcement, dated January 25,1995.[13] See pages 46 and 47 of the guidance.

On May 3, 2012, the TCEQ forwarded a letter to EPA which includes a written demonstration as required by 40 CFR 51.165(a)(1) and 51.166(b); section 110(l) of the CAA [14]; and the discussion at 67 FR 80186, at 80341 (December 31, 2002) [15] for how the definition of ''plantwide applicability limit'' provides that emission limits in its PAL Permits meets the Federal requirements for

[13] This guidance is available on-line at *http://www.epa.gov/region07/air/title5/t5memos/ptememo.pdf.*

[14] Section 110(l) of the Act provides that a SIP revision must not ''interfere with any applicable requirement concerning attainment or reasonable further progress * * *, or any other applicable requirement of this Act.''

[15] Here we state ''[e]ver since our current NSR Regulations were adopted in 1980, we have taken the position that States may meet the requirements of part 51 'with different but equivalent regulations,' 45 FR 52676.''

being enforceable as a practical matter.[16] In its letter TCEQ acknowledges that a practically enforceable permit includes conditions which establish clear legal obligations and allow compliance with these obligations to be verified. TCEQ further acknowledges that EPA's final PAL rules discuss the PAL monitoring, recordkeeping, and reporting requirements and characterizes these requirements as addressing a number of issues associated with the practical enforceability of PALs. TCEQ discussed how its PAL program meets the requirements for practical enforceability in each of the three elements identified in the 2002 NSR Reform Rule at 67 FR 80186, at 80190–80191 as follows:

• *A technically accurate limitation and the portions of the source subject to the limitation.* Texas established its PAL Program based on 30 TAC 116.180, 116.182, and 116.186(a). These rules satisfy the requirements of 40 CFR 51.165(f)(3)(i), (f)(4)(i)(A) and (E), and (f)(6)(1) and 40 CFR 51.166(w)(3)(i), (w)(4)(i)(*a*) and (*e*), and (w)(6)(1). These rules meet the Federal requirements for establishing a technically accurate limitation for a PAL and identifies that all emissions units at the major stationary source that will be subject to the PAL. This ensures that the TCEQ's PAL meets this requirement for practical enforceability.

• *The time period for the limitation (hourly, monthly, and annual limits such as rolling annual limits).* Texas' rules state that the PAL limit must be met on a 12-month rolling average (30 TAC 116.182(3) and 116.186(a)). These rules meet the Federal requirements at 40 CFR 51.165(f)(4)(i)(A) & (E) and 51.166(w)(4)(i)(*a*) and (*e*) and therefore ensure that the PAL Program and PAL permits issued under the program meet this requirement for practically enforceable.

• *The method to determine compliance, including appropriate monitoring, recordkeeping, and reporting.* Texas' rules at 30 TAC 116.186 include detailed monitoring, recordkeeping, and reporting that is consistent with the Federal PAL requirements. These monitoring, recordkeeping, and reporting provisions also meet this requirement for practical enforceability. Specific requirements are at 30 TAC 116.186(b)(4) and (8), and (c) which meet the Federal requirements at 40 CFR 51.165(f)(13)–(14) and 51.166(w)(13) (14). These monitoring, recordkeeping, and reporting provisions meet Federal PAL requirements and ensure that the program and PAL permits meets this requirement for practically enforceable.

The May 3, 2012, letter is included in the docket for this proposed rule. Accordingly, EPA is proposing to approve 30 TAC 116.12(22) submitted March 11, 2011–2, and 30 TAC 116.186(a) as submitted March 11, 2011–2, consistent with the demonstration included in the May 3, 2012, letter.

3. Submittal of 30 TAC 116.186(c)(2) Does Not Specifically Provide That Monitoring Data Must Meet Minimum Legal Requirements for Admissibility in a Judicial Proceeding To Enforce the PAL

a. Background

On February 1, 2006, TCEQ submitted 30 TAC 116.186(c)(1) which provided that the PAL monitoring system must accurately determine all emissions of the PAL pollutant in terms of mass per unit of time. It further provided that any such monitoring system must be based upon sound science and it must meet generally accepted scientific procedures for data quality and manipulation. Finally, this rule provided that the information generated by such monitoring system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL Permit. As submitted, this provision met the Federal requirements of 40 CFR 51.165(f)(12)(i) and 51.166(w)(12)(i).

On March 11, 2011–2, the TCEQ resubmitted this rule, now designated as 30 TAC 116.186(c)(2), and which included a revision which removed the requirement that the information generated by such monitoring system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL Permit. EPA considers the admissibility of monitoring data critical to a State's ability to enforce a regulatory requirement, including a PAL Permit requirement.

b. What is EPA's evaluation of the submitted SIP revision of 30 TAC 116.186(c)(2)?

On May 3, 2012, the TCEQ forwarded a letter to EPA which includes a written demonstration consistent with EPA's implementation of section 110(l) of the CAA; and the discussion at 67 FR 80186, at 80341 (December 31, 2002); on how the data from a monitoring system meets the minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL Permit.[17] In its letter TCEQ referred to its statutes and rules which establish the jurisdiction of the TCEQ, as well as permit conditions, which require owners and operators of facilities that may emit air contaminants which are authorized for construction and operation to maintain data necessary to demonstrate compliance with the terms and conditions of their authorizations. That authority is found in Tex. Health & Safety Code Sections 382.011, 382.012, 382.014, 382.016, 382.051, 382.0513, 382.0514, and 382.0515; Tex. Water Code sections 5.013(a)(11), 7.179, 7.180, and 7.181; and TCEQ rules 30 TAC 116.111, 116.115 (which are, for the most part, SIP approved). Additionally, the Texas Legislature has provided the TCEQ with the enforcement authority in Tex. Water Code Chapter 7 to initiate an action to enforce the statutes within the jurisdiction of the TCEQ, such as 30 TAC 7.179, 7.180, and 7.181.

The TCEQ adopted the requirement that the Texas Rules of Evidence, as applied in nonjury civil cases in the district courts of the State, be followed in all hearings. See 30 TAC 80.127. The initial factor affecting admissibility is relevance, and the relevance of offered evidence—evidence of non-compliance in an enforcement hearing—will support admissibility. However, if the data is not sufficient to support admissibility, or is non-existent, then the Executive Director of TCEQ may pursue an enforcement action for failing to maintain the data necessary to demonstrate compliance.

The May 3, 2012, letter is included in the docket for this proposed rule. Accordingly, EPA is proposing to approve 30 TAC 116.186(c)(2) submitted March 11, 2011–2, consistent with the demonstration included in the May 3, 2012, letter.

[16] The federal rules at 40 CFR 51.165(f)(2)(v), 51.165(f)(4)(i)(A), 51.166(w)(2)(v), and 51.166(w)(4)(i)(a) rules provide that the PAL must be enforceable as a practical matter. The omission of this requirement raises the question of how the rules meet federal enforceability requirements and is critical to the enforceability of a PAL. Accordingly, if the plan lacks such requirement, there must be a demonstration how the State has ensured that the PAL is enforceable as a practical matter or that the State otherwise has the ability to enforce the PAL in the absence of practical enforceability.

[17] The federal rules at 40 CFR 51.165(f)(12)(i) and 51.166(w)(12)(i) include requirements relating to the information generated by a PAL monitoring system. Among the requirements is that the information generated by such monitoring system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL Permit. EPA considers the admissibility of monitoring data critical to a State's ability to enforce a regulatory requirement, including a PAL Permit requirement. Accordingly, if the plan lacks such requirement, there must be a demonstration that the State has the ability to enforce the PAL based upon the information generated by the monitoring system.

4. Submittal of 30 TAC 116.186(a)

a. Background

On March 11, 2011–2, TCEQ submitted 30 TAC 116.186(a). This rule provides that the PAL limit will be enforced on a 12-month rolling average. However, this rule does not clearly specify that for compliance purposes, the emission calculations must include emissions from startups, shutdowns, and malfunctions, as required by 40 CFR 51.165(f)(7)(iv) and 51.166(w)(7)(iv).

b. What is EPA's evaluation of the submitted SIP revision of 30 TAC 116.186(a)?

On May 3, 2012, the TCEQ forwarded a letter to EPA which included a written demonstration consistent with EPA's implementation of 40 CFR 51.165(a)(1) and 51.166(b); section 110(l) of the CAA; and the discussion at 67 FR 80186, at 80341 (December 31, 2002); on how TCEQ addresses emissions from startups, shutdowns, and malfunctions, in the enforcement of its PAL Permits.[18] In this letter, the TCEQ states that a PAL permit limit can be generally enforced like any other permit limit, and the TCEQ has authority to enforce all permit requirements. This authority is found in Tex. Water Code, Chapter 7, and Tex. Health & Safety Code sections 382.011, 382.015, 382.016, 382.0515, 382.0516, 382.022, 382.023, and 382.085, as well as in certain rules found in 30 TAC Chapter 101, Subchapters A and F. In addition, TCEQ rule 30 TAC 101.201 requires regulated entities, regardless of whether they have a PAL permit, to record (and in some cases report) emissions events, which includes unscheduled maintenance, startup, and shutdown (MSS) activity emissions. Emissions from malfunctions are unauthorized emissions as defined in 30 TAC 101.1(107); therefore, they are unauthorized (non-compliant) emissions. Exceedances of a PAL limit, such as emissions from malfunctions, are unauthorized emissions and are subject to enforcement. TCEQ represented to EPA Region 6 that unscheduled MSS activity emissions are functionally equivalent to EPA's definition of malfunction.[19]

Furthermore, Texas' PAL also requires semiannual reports which include ''the *total* annual emissions (in tons per year) based upon a 12-month rolling total for each month in the reporting period.'' See 30 TAC 116.186(b)(4)(C)(ii). Emphasis added. This requires reporting of all emissions from the PAL, including authorized and unauthorized emissions.

The May 3, 2012, letter is included in the docket for this proposed rule. Accordingly, EPA is proposing to approve 30 TAC 116.186(a) as submitted March 11, 2011–2 consistent with the demonstration included in the May 3, 2012, letter.

V. What action is EPA proposing to take on the non-PAL aspects of the major NSR SIP requirements?

A. Background

On September 15, 2010, EPA disapproved these provisions for the reasons described below.

B. EPA Evaluation of the Grounds for Disapproval and Texas' Revisions To Address These Grounds

1. The March 11, 2011–1 Submitted Rule Did Not Explicitly Limit the Definition of ''Facility'' to an Emissions Unit

a. What were the grounds for the September 15, 2010, disapproval?

The NNSR non-PAL rules at 30 TAC 116.150 and 116.151, submitted February 1, 2006,[20] did not explicitly limit the definition of ''facility'' [21] to an ''emissions unit'' as do the submitted PAL rules and approved PSD non-PAL rules. It is our understanding of State law that a ''facility'' can be an ''emissions unit,'' i.e., any part of a stationary source that emits or may have the potential to emit any air contaminant, as the State explicitly provides in the revised PSD rule at 30 TAC 116.160(c)(3). A ''facility'' also can be a piece of equipment, which is smaller than an ''emissions unit.'' A ''facility'' can include more than one ''major stationary source.'' It can include every emissions point on a company site, without limiting these emissions points to only those belonging to the same industrial grouping (SIC code). Regardless, the State clearly thought the prudent legal course was to limit ''facility'' explicitly to ''emissions unit'' in its PSD SIP non-PALs rules. TCEQ did not submit a demonstration showing how the lack of this explicit limitation in the non-PALs NNSR SIP revision is at least as stringent as the revised Major NSR SIP requirements. Therefore, EPA disapproved the submitted non-PAL NNSR rules and its use as not meeting the revised Major NNSR non-PALs SIP requirements. See 75 FR 56424, at 56438, 56439–56440, and 56443.

b. What did Texas submit to address the grounds for disapproval?

In its SIP revisions submitted March 11, 2011–1 and March 11, 2011–2, Texas did not address these grounds relating to the use of the term ''facility'' for ''emissions unit'' in its non-PAL aspects of the Major Source SIP requirements for NNSR. In the March 11, 2011–1, submittal, the revisions to 30 TAC 116.150 only relate to the antibacksliding Major NSR SIP requirements for the one-hour ozone NAAQS, and the Major Nonattainment NSR SIP requirements for the 1997 eight-hour ozone NAAQS.[22] In the March 11, 2011–2 submittal, Texas only discussed the use of ''facility'' for the term ''emissions unit'' in relation to its changes to its PAL rules at 30 TAC 116.180, 116.182, 116.186, and 116.190. In each of these PAL rules, TCEQ states that the Federal term ''emissions unit'' is defined very similarly to the term ''facility'' as defined in the TCCA. In these PAL rules, the TCEQ added the language ''or emissions unit'' whenever the term ''facility'' is used.[23]

In the State's February 22, 2012, proposed rulemaking parallel reviewed by EPA for this proposal action, TCEQ proposed revisions to 30 TAC 116.150 and 116.151. To ensure clarity, TCEQ proposed to add the language ''or emissions unit'' where the terms ''facility'' or ''facilities'' are used. The TCEQ proposed this change in 30 TAC 116.150(a), (d)(1), and (d)(3) and in 30 TAC 116.151(a), (c)(1), and (c)(3), and requested parallel processing of these proposed revisions.

c. What is EPA's evaluation of the submitted SIP revision to address the grounds for disapproval?

As discussed above, the submittals dated March 11, 2011–1 and March 11, 2011–2, did not address how TCEQ limits the definition of ''facility'' to an ''emission unit'' in the Non-PAL

[18] The federal rules at 40 CFR 51.165(f)(7)(iv) and 51.166(w)(7)(iv) require that for purposes of enforcement of a PAL, the emission calculations must include emissions from startups, shutdowns, and malfunctions. The inclusion of these emissions is critical to the enforcement of the PAL. Accordingly, if the plan lacks such requirement, there must be a demonstration that the State has the ability to enforce the PAL.

[19] Letter from John Steib, Deputy Director, TCEQ Office of Compliance & Enforcement to John Blevins, Director, Compliance Assurance and Enforcement Division, USEPA, Region-6 Dallas, April 17, 2007.

[20] The February 1, 2006, submittal was resubmitted March 11, 2011–1.

[21] ''Facility'' is defined in the SIP approved 30 TAC 116.10(6) as ''a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment.''

[22] These requirements are addressed in sections III and IV of this preamble.

[23] See section IV.B.4 of this preamble for further discussion on how TCEQ addressed the use of ''facility'' for ''emissions unit'' in its PAL Program.

Aspects of the Major NSR SIP Requirements in 30 TAC 116.150 and 116.151. The TCEQ did not submit a demonstration in these submittals showing how the lack of this explicit limitation in the NNSR SIP non-PALs revision is at least as stringent as the revised Major NSR SIP requirements.

However, the State's proposed February 22, 2012, rulemaking parallel reviewed by EPA for this proposal action, addresses the use of the term ''facility'' for ''emissions unit'' as used in 30 TAC 116.150 and 116.151.

The revisions submitted March 11, 2011–1 for non-PAL NNSR include 30 TAC 116.150, New Major Source or Major Modification in Ozone Nonattainment Area, and 30 TAC 116.151, New Major Source or Major Modification in Ozone Nonattainment Area. In these sections, TCEQ uses the term ''facility'' in 30 TAC 116.150(a), (d)(1) and (d)(3) and in 30 TAC 116.151(a), (c)(1), and (c)(3). In the State's February 22, 2012, proposed rulemaking, TCEQ proposed to revise these paragraphs to add the language ''or emissions unit'' following each use of ''facility'' to ensure clarity and consistency with Federal requirements. The TCEQ stated that the Federal term ''emissions unit'' as defined in Federal rules is similar to the term ''facility'' as defined in the Texas Clean Air Act. The TCEQ addressed this matter in the following statements:

> A facility may constitute or contain a stationary source—a point of origin of a contaminant, as defined in THSC, § 382.003(12) and in § 116.10(15), a definition that is approved into the Texas SIP. As a discrete point, a facility can constitute but cannot contain a ''major stationary source'' as defined by federal law and in the TCEQ's SIP approved rule § 116.12(17). A facility is subject to major and minor NSR requirements, depending on the facts of the specific application.

See the TCEQ February 22, 2012, proposal, page 3. TCEQ further stated:

> The TCEQ and its predecessor agencies have consistently interpreted facility to preclude inclusion of more than one stationary source, in contrast to EPA's stated understanding. Likewise, TCEQ does not interpret facility to include ''every emissions point on a company site, even if limiting these emission points to only those belonging to the same industrial grouping (SIC code).'' The federal definition of ''major stationary source'' in 40 Code of Federal Regulations (CFR) 51.166(b)(1)(i)(a) is not equivalent to the state definition of ''source.'' A ''major stationary source'' can include more than one ''facility'' as defined under Texas law, which is consistent with EPA's interpretation of a ''major stationary source'' including more than one emissions unit.
>
> Under major NSR, EPA uses the term ''emissions unit'' (generally) when referring to part of a ''stationary source;'' TCEQ translates ''emissions unit'' to mean ''facility.'' The commission's SIP-approved Prevention of Significant Deterioration (PSD) permitting rule in § 116.160(c)(3) states, ''{t}he term 'facility' shall replace the words 'emissions unit' in the referenced sections of the CFR.''
>
> The above interpretation of the term ''facility'' has been consistently applied by the TCEQ and its predecessor agencies for more than 30 years. The TCEQ's interpretation of Texas statutes enacted by the Texas Legislature is addressed by the Texas Code Construction Act. More specifically, words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly, as per Texas Government Code, § 311.011(b).
>
> In response to the proposed disapproval, the commission proposed adding the phrase ''or emissions unit'' in its PAL rules, but did not do so in the nonattainment permitting rules because of the long term use of the term in the Texas permitting rules and the approved Texas SIP, which included earlier versions of these rules, and because in the intervening time EPA had approved the definition of ''facility'' into the SIP.
>
> The proposed changes to § 116.150 and § 116.151 would allow EPA to approve the updated rules that implement the federal nonattainment permitting program.

See the TCEQ February 22, 2012, proposal, pages 4 through 7.

As discussed above, the TCEQ in its February 22, 2012, proposed rulemaking parallel reviewed by EPA for this proposal action, provides a demonstration that for the purposes of 30 TAC 116.150 and 116.151, the use of the term ''facility'' is the same as the use of the term ''emissions unit.'' The changes proposed for 30 TAC 116.150 and 116.151 are the same changes adopted in the TCEQ's PAL Program, submitted March 11, 2011–2, to address that ''emissions unit'' means ''facility.'' The proposed changes are also consistent with the approved Texas PSD Program at 30 TAC 116.160(c)(3) which states ''{t}he term 'facility' shall replace the words 'emissions unit' '' in the referenced sections of the CFR. Accordingly, EPA is proposing to approve the revisions to 30 TAC 116.150 and 116.151 submitted March 11, 2011–1 and the revisions proposed on February 22, 2012.

2. The Definition of ''Baseline Actual Emissions'' Submitted March 11, 2011–2, to 30 TAC 116.12(3)(E) Did Not Require the Inclusion of Emissions Resulting From Startups, Shutdowns, and Malfunctions, as Required Under Federal Regulations

EPA disapproved the definition of ''baseline emissions'' as submitted February 1, 2006, in 30 TAC 116.12(3)(E) because it does not require the inclusion of emissions resulting from startups, shutdowns, and malfunctions, as required under Federal regulations.

a. What were the grounds for the September 15, 2010, disapproval?

Under the Major NSR SIP requirements, for any physical or operational change at a major stationary source, a source must include emissions resulting from startups, shutdowns, and malfunctions, in its determination of baseline actual emissions (40 CFR 51.165(a)(1)(xxxv)(A)(1) and (B)(1) and 51.166(b)(47)(i)(*a*) and (ii)(*a*)) and projected actual emissions (40 CFR 51.165(a)(1)(xxviii)(B) and 51.166(b)(40)(ii)(*b*)). The definition of the term ''baseline actual emissions,'' as submitted February 1, 2006, in 30 TAC 116.12(3)(E), did not require the inclusion of emissions resulting from startups, shutdowns, and malfunctions.[24] Our understanding of State law is that the use of the term ''may'' creates discretionary authority or grants permission or a power. *See* Section 311.016 of the Texas Code Construction Act. Similarly, the submitted definition of ''projected actual emissions'' at 30 TAC 116.12(29) does not require that emissions resulting from startups, shutdowns, and malfunctions be included. These submitted definitions differed from the Federal SIP definitions and the State had not provided information demonstrating that these definitions are at least as stringent as the Federal SIP definitions. Therefore, based upon the lack of a demonstration from the State, EPA disapproved the definitions of ''baseline actual emissions'' at 30 TAC 116.12(3) and ''projected actual emissions'' at 30 TAC 116.12(29) as not meeting the revised Major NSR SIP requirements. Specifically, the State had not provided:

- A replicable procedure for determining the basis for which emissions associated with maintenance, startup, and shutdown (MSS) will and will not be included in the baseline actual emissions;
- The basis for including emissions associated with maintenance in baseline actual emissions;
- The basis for not including MSS emissions, in the projected actual emissions; and

[24] The definition of ''baseline actual emissions,'' in 30 TAC 116.12(3)(E) submitted February 1, 2006, provided: ''* * * Until March 1, 2016, emissions previously demonstrated as emissions events or historically exempted under Chapter 101 of this title * * * *may* be included to the extent they have been authorized, or are being authorized, in a permit action under Chapter 116. 30 TAC 116.12(3)(E).'' (Emphasis added.)

• Provisions for how it will handle MSS emissions after March 1, 2016.

Therefore, based upon the lack of a demonstration from the State, as is required for a customized Major NSR SIP revision submittal, EPA disapproved the definitions of ''baseline actual emissions'' at 30 TAC 116.12(3) and ''projected actual emissions'' at 30 TAC 116.12(29) as not meeting the revised Major NSR SIP requirements.

Texas stated that it had excluded emissions associated with malfunctions from the calculation of baseline actual emissions and projected actual emissions because including such emissions would inflate the baseline and would narrow the gap between baseline actual emissions and projected actual emissions. EPA agrees with the reasons Texas uses to exclude malfunction emissions from baseline actual emissions and projected actual emissions and which are comparable to the reasons EPA used for excluding malfunction emissions from other States in which EPA approved such exclusion. Notwithstanding Texas' exclusion of malfunctions from these definitions, Texas must address the other grounds for disapproval as discussed above. This includes mandating the exclusion of malfunction emissions in both definitions. See 75 FR 56424, at 56438–56439 and 56443.

b. What did Texas submit to address the grounds for disapproval?

On March 11, 2011–2, TCEQ submitted revisions to address this concern. TCEQ removed the term ''exempted'' from 30 TAC 116.12(3)(E) and replaced it with ''unauthorized'' since emissions events were not exempt under 30 TAC Chapter 101, General Air Quality Rules, and must be reported.[25] TCEQ noted that in EPA's final disapproval of the definition of baseline actual emissions, EPA agreed that the inclusion of emission events [26] in the definition of baseline actual emissions would have the effect of inflating the baseline and narrowing that gap between the baseline actual emissions and the planned emission rate. See 75 FR 56424, at 56443. EPA noted that the definition of baseline actual emissions included emission events and stated that to be approvable the definition must exclude emission events. This is because EPA noted that the definitions of ''baseline actual emissions'' and ''projected actual emissions'' must both exclude or include malfunction emissions. The TCEQ stated that its long-standing policy is not to reward emissions from events which are upset events and unplanned MSS activities. TCEQ stated that the term ''unplanned MSS activities'' substitutes for EPA's term ''unscheduled MSS.'' TCEQ further stated that unplanned MSS activities are the functional equivalent of malfunctions, as are all upset emissions. TCEQ also noted that EPA objects to the use of the word ''may,'' because it indicates discretion without replicable procedures for such determinations.

Accordingly, TCEQ reworded 30 TAC 116.12(3)(E) to clarify that MSS emissions reported under Chapter 101 shall be included in the calculation of baseline actual emissions but *only to the extent that they have been authorized or are being authorized.* Because *unauthorized* emissions are not included, they are therefore *excluded* in the calculation of baseline actual emissions. The TCEQ *does not authorize emission events,* which are emissions from upsets and unscheduled MSS activities. While the text, as adopted in 2006, implemented that long standing policy, it was not written to clearly limit the *inclusion of only planned MSS emissions that have been authorized or in the process of being authorized during a defined time period.* These changes ensure:

• That there is no discretion as to inclusion of only certain planned MSS emissions (and consequently the exclusion of emission events) in the baseline actual emissions calculation, and

• That the definitions of ''baseline actual emissions'' and ''projected actual emissions'' are comparable and are therefore approvable.

Additionally, the TCEQ made changes from its proposal by retaining in 30 TAC 116.12(3)(E) the phrase ''or are being authorized,'' relating to planned MSS emissions. Further, 30 TAC 116.12(3)(D) provides that *non-compliant emissions are excluded* from baseline actual emissions. To the extent that there are planned MSS emissions that remain unauthorized on or after March 1, 2016, those will necessarily be ''non-compliant'' and therefore, no longer included in the determination of baseline actual emissions under the requirements of subparagraph (D). This is consistent with the Commission's policy regarding authorization of planned MSS emissions.

Additionally, the TCEQ amended the definition of ''projected actual emissions'' in 30 TAC 116.12(29). The Commission is replacing the phrase ''unauthorized emissions from startup and shutdown activities'' with ''emissions from planned maintenance, startup, or shutdown activities, which were historically unauthorized and subject to reporting under Chapter 101 to the extent that *they have been authorized or are being authorized.''* Emphasis added. This change is necessary to ensure that this definition is compatible with the definition of ''baseline actual emissions.'' As discussed earlier, the definition of ''baseline actual emissions'' is being amended to ensure TCEQ's intent of the types of emissions that can be included in the calculation is clear. While the TCEQ intended that these two definitions be compatible when adopted in 2006, the EPA's comments indicated that this may not be the case. The EPA commented that the term ''projected actual emissions'' does not include emissions from startups, shutdowns, and malfunctions. However, as stated in the original adoption preamble for this rule in 2006, the TCEQ excluded malfunction emissions in compliance with long-standing Commission policy to exclude noncompliant emissions. The EPA in its final disapproval (see September 15, 2010 (75 FR 56424)) agreed that the inclusion of emissions events, which are similar to the Federal term ''malfunctions'' in the definition of ''baseline actual emissions'' would be inappropriate. Further, EPA has approved definitions in other states that also exclude malfunctions. (See September 15, 2010 (75 FR 56441)). These amendments are necessary to ensure that both definitions are approvable as revisions to the SIP.

c. What is EPA's evaluation of the submitted SIP revision to address the grounds for disapproval?

Texas submitted revisions on March 11, 2011–2, that address each of the items that EPA identified as needing to be addressed. Texas addressed these items as follows:

• *A replicable procedure for determining the basis for which emissions associated with MSS will, and will not, be included in the baseline actual emissions.*

TCEQ stated that its long-standing policy is not to reward emissions from emission events, which are upset events and unplanned MSS activities. TCEQ's term ''unplanned MSS activities'' substitutes for EPA's term ''unscheduled MSS.'' Unplanned MSS activities are

[25] These requirements are in the SIP at 30 TAC Chapter 101, Subchapter F, and approved November 10, 2010 (75 FR 68989).

[26] The current SIP-approved definition of ''emission event'' approved November 10, 2010 (75 FR 68989), at 30 TAC 101.1(28) states: ''Emissions event—Any upset event or unscheduled maintenance, startup, or shutdown activity, from a common cause that results in unauthorized emissions of air contaminants from one or more emissions points at a regulated entity.''

the functional equivalent of malfunctions, as are all upset emissions.

EPA also objected to the use of the word ''may'' stating that it indicates discretion without replicable procedures for such determinations. The submitted revision no longer uses the word ''may.''

TCEQ addressed through its revisions to 30 TAC 116.12(3)(E) to clarify that MSS emissions reported under Chapter 101 shall be included in the calculation of baseline actual emissions but only to the extent that they have been authorized, or are being authorized. Unauthorized emissions are not included and are therefore excluded in the calculation of baseline actual emissions. TCEQ stated that it does not authorize emission events, which are emissions from upsets and unscheduled MSS activities.

Consequently, TCEQ reworded 30 TAC 116.12(3)(E) to clarify that MSS emission reported under Chapter 101 shall be included in the calculation of baseline actual emissions but only to the extent that they have been authorized or are being authorized. Because unauthorized emissions are not included, they are therefore excluded in the calculation of baseline actual emissions. The TCEQ does not authorize emission events, which are emissions from upsets and unscheduled MSS activities. These changes ensure:

—That there is no discretion as to inclusion of only certain planned MSS emission (and consequently the exclusion of emission events) in the baseline actual emissions calculation, and

—That the definitions of ''baseline actual emissions'' and ''projected actual emissions'' are comparable and are therefore approvable.

• *The basis for including emissions associated with maintenance in baseline actual emissions.*

The TCEQ includes MSS emissions to the extent that they have been authorized or are being authorized. The MSS includes authorized emission from maintenance. The bases for including authorized MSS emissions (which include authorized emissions from maintenance) are discussed above in section V.B.2.b. As discussed above, unauthorized emissions, including unauthorized emissions from maintenance activities, are not included in the calculation of the baseline actual emissions. TCEQ does not authorize emission events which are emissions from upsets and unscheduled MSS activities (including maintenance).

• *The basis for not including unauthorized MSS emissions in the projected actual emissions.*

TCEQ described its adopted changes to the definition of ''projected actual emissions'' in 30 TAC 116.12(29) as a replacement of the phrase ''unauthorized emissions from startup and shutdown activities'' with ''unauthorized emissions from startup and shutdown activities which were historically unauthorized and subject to reporting under Chapter 101 to the extent that they have been authorized or are being authorized.'' This change ensures that this definition is compatible with the definition of ''baseline actual emissions.'' The TCEQ excluded malfunction emissions consistent with its long-standing policy to exclude non-compliant emissions, as discussed above in section V.B.2.b of this preamble.

• *Provisions for how it will handle maintenance, startup, and shutdown emissions after March 1, 2016.*

Under 30 TAC 116.12(3)(D), TCEQ excludes non-compliant emissions from the baseline actual emissions. To the extent that these emissions are planned MSS emissions that remain *after* March 1, 2016, those emissions are necessarily ''non-compliant'' and will be excluded from the calculation of the baseline actual emissions under subparagraph (D).

In summary, the TCEQ has addressed the grounds for disapproval, as discussed above, and demonstrated that the submitted revisions meet the following Federal requirements:

• Inclusion of planned MSS activities to the extent they have been authorized, or are being authorized, in the calculation of baseline actual emissions. These revisions meet the requirements of 40 CFR 51.165(a)(1)(xxxv)(A)(1) and (B)(1) and 40 CFR 51.166(b)(40)(ii)(a) and (b)(47)(i)(a) and (ii)(a); and

• Inclusion of planned MSS activities to the extent they have been authorized, or are being authorized, in the calculation of projected actual emissions. These revisions meet the requirements of 40 CFR 51.165(a)(1)(xxviii)(B)(2); and 40 CFR 51.166(b)(40)(ii)(b).

These revisions therefore satisfy the requirements for SIP approval. Accordingly, EPA is proposing to approve the revisions to the definitions of ''baseline actual emissions'' and ''projected actual emissions'' in 30 TAC 116.12(3) and (29) submitted March 11, 2011–2.

3. The Submitted Definition ''Baseline Actual Emissions'' Does Not Provide That the Emissions Must Be Calculated in Terms of the Average Rate, in Tons per Year

a. What were the grounds for the September 15, 2010, disapproval?

The Federal definition of the ''baseline actual emissions'' provides that these emissions must be calculated in terms of ''the average rate, in tons per year at which the unit actually emitted the pollutant during any consecutive 24-month period.'' The submitted definition of the term ''baseline actual emissions'' found at 30 TAC 116.12(3)(A), (B), (D), and (E) differed from the Federal definition by leaving out the word ''average'' and instead providing that the baseline shall be calculated as ''the rate, in tons per year at which the unit actually emitted the pollutant during any consecutive 24-month period.'' Texas did not provide any demonstration, as required for a customized major NSR SIP revision submittal, showing how this different definition is at least as stringent as the Federal definition. See 75 FR 56424, at 56439, and 56443.

b. What did Texas submit to address the grounds for disapproval?

On March 11, 2011–2 the TCEQ submitted revisions to the definition of ''baseline actual emissions'' in 30 TAC 116.12(3)(A), (B), (D), and (E), that specify that the rate is an average rate.

c. What is EPA's evaluation of the submitted SIP revision to address the grounds for disapproval?

A submitted change to the definition of ''baseline actual emissions'' in 30 TAC 116.12(3)(A), (B), (D), and (E), is to specify that the rate is an average rate. The revised definition meets the Federal requirements under 40 CFR 51.165(a)(1)(xxxv)(A), (B), (D) and (E) and 51.166(b)(47)(i), (ii), (iv), and (v). These revisions satisfy the requirements for SIP approval. Accordingly, EPA is proposing to approve the revisions to the definition of ''baseline actual emissions'' in 30 TAC 116.12 submitted March 11, 2011–2.[27]

VI. Does approval of Texas' rule revisions interfere with attainment, reasonable further progress, or any other applicable requirement of the act?

The Act provides in section 110(l) that:

Each revision to an implementation plan submitted by a State under this Act shall be

[27] A similar issue in the PAL Program is addressed in section IV.B.5 of this preamble.

adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revisions would interfere with any applicable requirement concerning attainment and reasonable further progress * * *, or any other applicable requirement of the Act.

EPA's November 2002 rulemaking for NSR Reform Rules included the ''Supplemental Analysis of the Environmental Impact of the 2002 Final NSR Improvement Rules'' which demonstrated the 2002 NSR Reform Rules were compliant with this requirement.[28]

In EPA's Notice of Reconsideration of the final December 31, 2002, NSR Reform rule we stated:

During the rulemaking process, we strived to take into consideration relevant and reliable information on environmental effects. We did in fact take account of environmental considerations in formulating the final rules, and believe the final rules are properly supported and justified in this regard.

See 68 FR 44620, at 44624 (July 30, 2003). We further stated:

In the supplemental environmental analysis, we found that the overall effect of the final rule would be a net benefit to the environment compared to the former NSR rules because the final rule would result in reductions in emissions of air pollution. We found that four of the five provisions in the final rule would result in environmental benefits, and the other provision would have no significant effect. Specifically, for each of the rule's five provisions, the analysis concludes the following:

(1) The PAL provisions will result in tens of thousands of tons per year (tpy) of volatile organic compounds (VOC) reductions from just three industrial categories where PALs are likely to be used most often. Overall reductions will be greater because it is likely that PALs also will be adopted in other source categories.

* * * * *

(4) The portion of the rule addressing baseline actual emissions will not have a significant environmental impact. The former program already allowed sources to use a more representative baseline period, with the approval of the reviewing authority, instead of the two-year period before the change specifically delineated in the former rules. The final rules provide an expanded time frame from which you may select a representative baseline but eliminate the option of going beyond this period of time. While the new rules may allow a small number of existing emissions units to use higher baselines, other units will be required to use lower baselines due to the requirement to adjust the baseline downward to account for any new emission limitations at that emissions unit. The changes' overall impact will be small because the portion of the rule addressing baseline actual emissions does not affect new sources, new units built at existing sources, electric utilities, and many modified sources.

(5) The change to the actual-to-projected-actual test will have a net environmental benefit, but a relatively small one. The benefit stems from removing: (1) Incentives to keep actual emissions high before making a change, and (2) barriers to projects that will reduce emissions. The size of this benefit nationally is uncertain. Its impact would be small because the change in emissions calculation methodology does not affect either of the following: (1) New sources, new units built at existing industrial facilities, and electric utilities, or (2) any modifications at existing facilities that actually result in significant increases in emissions. Historically, under the previous major NSR rule, virtually all other sources making a physical or operational change have accepted ''permit limits'' so as to be confident that they will not trigger major NSR. Our analysis concludes that the benefits from this aspect of the program are likewise largely unaffected because such sources must still assure that actual emissions do not significantly increase as a result of a change.

The supplemental environmental analysis uses quantitative information where possible but also notes limitations on our ability to quantify impacts of the rule. We used qualitative information to supplement the analysis when such limitations are present. We also noted that the final rules will result in economic benefits that stem from improved flexibility, increased certainty, and reduced administrative burden. These benefits are important, but were not quantified as part of this environmental analysis.

See 68 FR 44624–44625 (July 30, 2003). In the final reconsideration action, we stated:

After carefully considering the information that was submitted, we have determined that none of the new information presented leads us to conclude that the analysis was incorrect or substantially flawed. Therefore, we are re-affirming the validity of the original conclusions. A summary of the comments received and our responses to these comments can be found in our Technical Support Document.

See 68 FR 63021, at 63023 (November 7, 2003). The Technical Support Document for the reconsideration is available at *http://www.epa.gov/air/nsr/documents/petitionresponses10-30-03.pdf*.

In this instance Texas has adopted new rules that are at least as stringent as the applicable Federal rules and correspond with the 2002 Final NSR Improvement Rules. There are no data currently available that would show that implementation of Texas' NSR Reform Program would result in interference with any applicable requirement concerning attainment or reasonable further progress or any other applicable requirement of the Act. We anticipate that Texas' NSR Reform Program will be have the same impact as the Federal PAL rules as described in the 2002 Supplemental Analysis and the 2003 reconsideration.

The Texas PAL will result in lower emissions than the allowable emissions on the face of the permit in effect before issuance to the PAL Permit. This is because the PAL Permit is based upon actual emissions which will generally be less than the emissions allowed in the permit in effect prior to issuance of the PAL permit. The PAL is established as the sum of the baseline actual emissions from all emissions units at the major stationary source plus the significant level for the PAL pollutant, See 30 TAC 116.188. Furthermore, the average emissions for each emissions unit must be adjusted downward to exclude any non-compliant emissions during the consecutive 24-month baseline period that is used to establish the baseline actual emissions for the PAL. See 30 TAC 116.12(3)(D) under the definition of ''baseline actual emissions.'' As discussed in section IV.B.1 in this preamble, a PAL can only be established at an existing major stationary source which has had at least two years of operating history to establish an actuals PAL. Consequently, the PAL will generally be established at a level that is lower than the allowable emissions established in the pre-existing permit. Finally, in the 2002 NSR Reform rulemaking, we note that a PAL provides operational flexibility for an owner or operator to manage source-wide emissions without triggering major NSR when the changes do not result in emissions above the PAL. This creates incentive for an owner or operator to create room for growth by employing innovative control technologies and pollution control measures to create emissions reductions to facilitate economic expansion. See 67 FR 80186, at 80206–80207 (December 31, 2002).

For the reasons stated above, we are proposing to find that the submitted SIP revisions will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act.

VII. Proposed Action

Under section 110(k)(3) and parts C and D of the Act and for the reasons stated above, EPA proposes to approve the following revisions to the Texas SIP:

- Revisions to 30 TAC 116.12—Nonattainment and Prevention of Significant Deterioration Review Definitions—submitted June 10, 2005, and resubmitted March 11, 2011–1; February 1, 2006, and resubmitted

[28] This document is available at *http://www.epa.gov/air/nsr/documents/nsr-analysis.pdf*.

March 11, 2011–1; revisions submitted March 11, 2011–2; the revisions proposed February 22, 2012, for parallel processing; and the letter from TCEQ to EPA dated May 3, 2012, which clarifies TCEQ's interpretation of 30 TAC 116. 12.

- Revisions to 30 TAC 116.115—General and Special Conditions—submitted March 11, 2011–2.
- New 30 TAC 116.127—Actual to Projected Actual and Emission Exclusion Test for Emissions—submitted February 1, 2006 (as 30 TAC 116.121) and resubmitted March 11, 2011–2 (as redesignated to 30 TAC 116.127).
- Revisions to 30 TAC 116.150—New Major Source or Major Modification in Ozone Nonattainment Area—submitted June 10, 2005, and resubmitted March 11, 2011–1; February 1, 2006, and resubmitted March 11, 2011–1; revisions submitted March 11, 2011–1; and the revisions proposed February 22, 2012, for parallel processing.
- Revisions to 30 TAC 116.151—New Major Source or Major Modification in Nonattainment Areas Other Than Ozone—submitted February 1, 2006, and resubmitted March 11, 2011–2 (without further revision); and the revisions proposed February 22, 2012, for parallel processing.
- New 30 TAC 116.180—Applicability—submitted February 1, 2006, and resubmitted March 11, 2011–2; revisions submitted March 11, 2011–2; and the revisions proposed February 22, 2012, for parallel processing.
- New 30 TAC 116.182—Plant-Wide Applicability Permit—Submitted February 1, 2006, and resubmitted March 11, 2011–2; and revisions submitted March 11, 2011–2.
- New 30 TAC 116.184—Application Review Schedule—Submitted February 1, 2006, and resubmitted March 11, 2011–2 (without further revision).
- New 30 TAC 116.186—General and Specific Conditions—Submitted February 1, 2006, and resubmitted March 11, 2011–2; revisions submitted March 11, 2011–2; the revisions proposed February 22, 2012, for parallel processing; and the letter from TCEQ to EPA dated May 3, 2012, which clarifies TCEQ's interpretation of 30 TAC 116.12.
- New 30 TAC 116.188—Plant-Wide Applicability Limit—Submitted February 1, 2006, and resubmitted March 11, 2011–2; and revisions submitted March 11, 2011–2.
- New 30 TAC 116.190—Federal Nonattainment and Prevention of Significant Deterioration Review—Submitted February 1, 2006, and resubmitted March 11, 2011–2; and revisions submitted March 11, 2011–2.
- New 30 TAC 116.192—Amendments and Alterations—Submitted February 1, 2006, and resubmitted March 11, 2011–2; and revisions submitted March 11, 2011–2.
- New 30 TAC 116.196—Renewal of a Plant-Wide Applicability Limit Permit—Submitted February 1, 2006; and resubmitted March 11, 2011–2 (without further revision).
- New 30 TAC 116.198—Expiration or Voidance—Submitted February 1, 2006, and resubmitted March 11, 2011–2 (without further revision).

VIII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. See 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this notice merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 7, 2012.

Samuel Coleman,

Acting Regional Administrator, Region 6.

[FR Doc. 2012–15049 Filed 6–19–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–R9–MB–2012–0028; FF09M21200–123–FXMB1231099BPP0L2]

RIN 1018–AY61

Migratory Bird Hunting; Application for Approval of Copper-Clad Iron Shot as Nontoxic for Waterfowl Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of application for nontoxic shot approval.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce that Environ-Metal, Inc., of Sweet Home, Oregon, has applied for our approval of shot composed of copper and iron as nontoxic for waterfowl hunting in the United States. The shot contains a maximum of 44.1 percent copper by weight, with iron composing the rest of the shot. We have initiated review of the shot under the criteria we have set out in our nontoxic shot approval procedures in our regulations.

DATES: This notice announces the initiation of our review of a Tier 1 application submitted in accordance with 50 CFR 20.134. We will complete

the review of the application by August 20, 2012.

ADDRESSES: You may view the application by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Search for Docket No. FWS–R9–MB–2012–0028.
- Request a copy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: George Allen, at 703–358–1825.

SUPPLEMENTARY INFORMATION:

Background

The Migratory Bird Treaty Act of 1918 (Act) (16 U.S.C. 703–712 and 16 U.S.C. 742 a–j) implements migratory bird treaties between the United States and Great Britain for Canada (1916 and 1996 as amended), Mexico (1936 and 1972 as amended), Japan (1972 and 1974 as amended), and Russia (then the Soviet Union, 1978). These treaties protect most migratory bird species from take, except as permitted under the Act, which authorizes the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, we control the hunting of migratory game birds through regulations in 50 CFR part 20. We prohibit the use of shot types other than those listed in the Code of Federal Regulations (CFR) at 50 CFR 20.21(j) for hunting waterfowl and coots and any species that make up aggregate bag limits.

Since the mid-1970s, we have sought to identify types of shot for waterfowl hunting that are not toxic to migratory birds or other wildlife when ingested. We have approved nontoxic shot types and added them to the migratory bird hunting regulations in 50 CFR 20.21(j). We will continue to review all shot types submitted for approval as nontoxic.

Current Application

Environ-Metal has submitted its application to us with the counsel that it contained all of the specified information required by 50 CFR 20.134 for a complete Tier 1 submittal, and has requested unconditional approval pursuant to the Tier 1 timeframe. Having determined that the application is complete, we have initiated a comprehensive review of the Tier 1 information under 50 CFR 21.134. After review, we will either publish a notice of review to inform the public that the Tier 1 test results are inconclusive, or we will publish a proposed rule to approve the candidate shot.

If the Tier 1 tests are inconclusive, the notice of review will indicate what other tests we will require before we will again consider approval of the shot as nontoxic. If the Tier 1 data review results in a preliminary determination that the candidate material does not pose a significant toxicity hazard to migratory birds, other wildlife, or their habitats, the Service will commence with a rulemaking proposing to approve the candidate shot and add it to our list at 50 CFR 20.21(j).

Authority: We publish this notice under the authority of the Migratory Bird Treaty Act (16 U.S.C. 703–712 and 16 U.S.C. 742 a–j) and in accordance with the regulations at 50 CFR 134(b)(2)(i)(D)(3).

Dated: June 12, 2012.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–14956 Filed 6–19–12; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 77, No. 119
Wednesday, June 20, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 14, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Office of Advocacy and Outreach

Title: USDA/1890 National Scholars Program Application.

OMB Control Number: 0503–0015.

Summary of Collection: The USDA/1890 National Scholars Program is an annual recruiting effort by the USDA/1890 National Program Office and the participating eighteen 1890 Land-Grant Universities. This human capital initiative is a collective effort geared towards attracting graduating high school seniors and currently enrolled college students who are rising sophomores or juniors, into pursuing disciplines in agriculture, natural resources, and related sciences at any of the 1890 Land-Grant Universities. The USDA/1890 National Scholars Program offers scholarships to U.S. citizens who are seeking a bachelor's degree, in the fields of agriculture, food, or natural resources sciences and related majors, at one of the eighteen Historically Black Land-Grant Universities. Each applicant is required to submit a hard copy of the USDA/1890 National Scholars Program Application Form to the USDA/1890 Program Liaison assigned to the 1890 Land-Grant University to which they want to apply.

Need and Use of the Information: The information to be collected from the application includes the applicant name, address, educational background (grade point average, test scores), name of universities interested in attending, desired major, extracurricular activities, interest and habits. The information will be used to assist the selecting agencies in their process of identifying potential recipients of the scholarship. The program would not be able to function consistently without this annual collection.

Description of Respondents: Individuals or households.

Number of Respondents: 1,500.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 3,900.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–14976 Filed 6–19–12; 8:45 am]

BILLING CODE 3410–88–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 14, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Business—Cooperative Service

Title: Energy Audit and Renewable Energy Development Assistance Program.

OMB Control Number: 0570–0059.

Summary of Collection: This grant program is authorized under the ''Food,

Conservation, and Energy Act of 2008,'' Public Law 110–246, (2008 Farm Bill). Grants are made to eligible entities to provide energy audits and renewable energy development assistance to enable agricultural producers and rural small businesses to become more energy efficient and to use renewable energy technologies and resources. Grant funds may be used to conduct and promote energy audits; provide recommendations and information on how to improve the energy efficiency of the operations of the agricultural producers and rural small businesses, and how to use renewable energy technologies and resources in the operations.

Need and Use of the Information: Applicants seeking a grant need to submit applications that include a project proposal, certifications, and agreements to the Agency. The project proposal must contain an application narrative, plan and schedule for implementation, number of entities assisted, budget, geographic scope, capabilities of the applicant, resources, leveraging, outreach, description of the method and rationale used to select recipients to be served, and project performance. This information will be used to determine applicant eligibility, project eligibility, and to ensure that funds are used for authorized purposes. Failure to collect proper information could result in improper determinations of eligibility or improper use of funds.

Description of Respondents: Business or other for-profits; State, Local and Tribal Governments.

Number of Respondents: 53.

Frequency of Responses: Reporting: Quarterly, Monthly, Annually.

Total Burden Hours: 1,170.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–14977 Filed 6–19–12; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 14, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC, *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Grazing Permit Administration Forms.

OMB Control Number: 0596–0003.

Summary of Collection: Domestic livestock grazing occurs on approximately 92 million acres of National Forest Service (NFS) lands. This grazing is subject to authorization and administrative oversight by the Forest Service (FS). The information is required for the issuance and administration of grazing permits, including fee collections, on NFS land as authorized by the Federal Land Policy and Management Act of 1976, as amended, and subsequent Secretary of Agriculture Regulation 5 U.S.C. 301, 36 CFR part 222, subparts A and C. The bills for collection of grazing fees are based on the number of domestic livestock grazed on national forest lands and are a direct result of issuance of the grazing permit. Information must be collected on an individual basis and is collected through the permit issuance and administration process. FS will collect information using several forms.

Need and Use of the Information: FS will collect information on the ownership or control of livestock and base ranch property and the need for additional grazing to round out year long ranching operations. FS uses the information collected in administering the grazing use program on NFS land. If information were not collected it would be impossible for the agency to administer a grazing use program in accordance with the statutes and regulations.

Description of Respondents: Farms; Business or other for-profit; Individuals or households.

Number of Respondents: 1,320.

Frequency of Responses: Reporting: Annually; Other (as needed basis).

Total Burden Hours: 516.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–15046 Filed 6–19–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–FV–12–0021]

Processed Raspberry Promotion, Research and Information Program; Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this document announces the Agricultural Marketing Service's (AMS) intention to request approval, from the Office of Management and Budget, for an extension of and revision to the currently approved information collection National Processed Raspberry Promotion, Research, and Information Program.

DATES: Comments on this document must be received by August 20, 2012 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit comments concerning this information collection document. Comments should be submitted online at *www.regulations.gov* or sent to Promotion and Economics Division, Fruit and Vegetable Program, AMS, U.S. Department of Agriculture (USDA), 1400 Independence Avenue SW., Stop 0244, Room 1406–S, Washington, DC 20250–0244, or by facsimile to (202)

205–2800. All comments should reference the docket number, the date, and the page number of this issue of the **Federal Register**. All comments received will be posted without change, including any personal information provided, online at *http://www.regulations.gov* and will be made available for public inspection at the above physical address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Marlene Betts at the above physical address, by telephone at (202) 720–9915, or by email at *Marlene.Betts@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: National Processed Raspberry Promotion, Research, and Information Program.

OMB Number: 0581–0258.

Expiration Date of Approval: November 30, 2012.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Processed Raspberry Promotion, Research, and Information program was created to help maintain, develop, and expand markets and uses for processed raspberries. The Processed Raspberry Promotion, Research, and Information Order (Order) (7 CFR part 1208) was established under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425).

The Order provides for the development and financing of a coordinated program of research, promotion, and information for processed raspberries. The programs may include projects relating to research, consumer information, advertising, sales promotion, producer information, market development, and product development to assist, improve or promote the marketing, distribution, and utilization of processed raspberries.

The Processed Raspberry Promotion, Research and Information program was approved in a referendum conducted by USDA between June 8 and June 24, 2011, by persons to be covered by and assessed under the Order. In the referendum, 88 percent of those who voted favored implementation of the Order. Producers and importers of 20,000 or more pounds of raspberries for processing or processed raspberries respectively, during the calendar year January 1 through December 31, 2010, were eligible to vote in the referendum.

The program is administered by an industry council appointed by the Secretary of Agriculture and financed by a mandatory assessment on producers of raspberries for processing and importers of processed raspberries. The Secretary of Agriculture also approves the council's budgets, plans, and projects. These responsibilities have been delegated to AMS.

The information collection requirements in this request are essential to carry out the intent of the 1996 Act. The objective in carrying out this responsibility includes assuring the following: (1) Funds are collected and properly accounted for; (2) expenditures of all funds are for the purposes authorized by the 1996 Act and Order; and, (3) the council's administration of the programs conforms to USDA policy.

The Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already submitted under other raspberry programs administered by the Department and other state programs.

The forms covered under this collection require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the 1996 Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Council. The forms are simple, easy to understand, and place as small a burden as possible on the person required to file the information.

Collecting information yearly will coincide with normal industry business practices. The timing and frequency of collecting information are intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports. The requirement to keep records for two years is consistent with normal industry practices. In addition, the information to be included on these forms is not available from other sources because such information relates specifically to individual producers, first handlers, processors, foreign producers, and importers who are subject to the provisions of the 1996 Act. Therefore, there is no practical method for collecting the required information without the use of these forms.

AMS is committed to complying with the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.36 hours per response.

Respondents: Producers, first handlers, importers, foreign producers, and at-large nominees.

Estimated Number of Respondents: 297.

Estimated Total Annual Responses: 788.

Estimated Number of Responses per Respondent: 2.65.

Estimated Total Annual Burden on Respondents: 282.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this document will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: June 15, 2012.

Ruihong Guo,

Acting Administrator.

[FR Doc. 2012–15023 Filed 6–19–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2012–0017]

International Standard-Setting Activities

AGENCY: Office of Food Safety, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the sanitary and phytosanitary standard-setting activities of the Codex Alimentarius Commission (Codex), in accordance with section 491 of the Trade Agreements Act of 1979, as amended, and the Uruguay Round Agreements Act, Public Law 103–465, 108 Stat. 4809. This notice also provides a list of other standard-setting activities of Codex, including commodity standards, guidelines, codes of practice, and revised texts. This notice, which

covers the time periods from June 1, 2011, to May 31, 2012, and June 1, 2012, to May 31, 2013, seeks comments on standards under consideration and recommendations for new standards.

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Patriots Plaza 3, 1400 Independence Avenue SW., Mailstop 3782, Room 8–163A, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to Patriots Plaza 3, 355 E. Street SW., Room 8–163A, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2012–0017. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at Patriots Plaza 3, 355 E. Street SW., Room 8–164, Washington, DC 20250–3700 between 8 a.m. and 4:30 p.m., Monday through Friday.

Please state that your comments refer to Codex and, if your comments relate to specific Codex committees, please identify those committees in your comments and submit a copy of your comments to the delegate from that particular committee.

FOR FURTHER INFORMATION CONTACT: Karen Stuck, United States Manager for Codex, U.S. Department of Agriculture, Office of Food Safety, Room 4861, South Agriculture Building, 1400 Independence Avenue SW., Washington, DC 20250–3700; phone: (202) 205–7760; fax: (202) 720–3157; email: *USCodex@fsis.usda.gov.*

For information pertaining to particular committees, the delegate of that committee may be contacted. (A complete list of U.S. delegates and alternate delegates can be found in Attachment 2 of this notice.) Documents pertaining to Codex and specific committee agendas are accessible via the World Wide Web at *http://www.codexalimentarius.org/meetings-reports/en/.* The U.S. Codex Office also maintains a Web site at *http://www.fsis.usda.gov/Regulations_&_Policies/Codex_Alimentarius/index.asp.*

SUPPLEMENTARY INFORMATION:

Background

The World Trade Organization (WTO) was established on January 1, 1995, as the common international institutional framework for the conduct of trade relations among its members in matters related to the Uruguay Round Trade Agreements. The WTO is the successor organization to the General Agreement on Tariffs and Trade (GATT). U.S. membership in the WTO was approved and the Uruguay Round Agreements Act was signed into law by the President on December 8, 1994. The Uruguay Round Agreements became effective, with respect to the United States, on January 1, 1995. Pursuant to section 491 of the Trade Agreements Act of 1979, as amended, the President is required to designate an agency to be ''responsible for informing the public of the sanitary and phytosanitary (SPS) standard-setting activities of each international standard-setting organization.'' The main organizations are Codex, the World Organisation for Animal Health, and the International Plant Protection Convention. The President, pursuant to Proclamation No. 6780 of March 23, 1995 (60 FR 15845), designated the U.S. Department of Agriculture as the agency responsible for informing the public of the SPS standard-setting activities of each international standard-setting organization. The Secretary of Agriculture has delegated to the Office of Food Safety the responsibility to inform the public of the SPS standard-setting activities of Codex. The Office of Food Safety has, in turn, assigned the responsibility for informing the public of the SPS standard-setting activities of Codex to the U.S. Codex Office.

Codex was created in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the principal international organization for establishing standards for food. Through adoption of food standards, codes of practice, and other guidelines developed by its committees and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers, ensure fair practices in the food trade, and promote coordination of food standards work undertaken by international governmental and nongovernmental organizations. In the United States, U.S. Codex activities are managed and carried out by the United States Department of Agriculture (USDA); the Food and Drug Administration (FDA), Department of Health and Human Services (HHS); the National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC); and the Environmental Protection Agency (EPA).

As the agency responsible for informing the public of the SPS standard-setting activities of Codex, the Office of Food Safety publishes this notice in the **Federal Register** annually. Attachment 1 (Sanitary and Phytosanitary Activities of Codex) sets forth the following information:

1. The SPS standards under consideration or planned for consideration; and

2. For each SPS standard specified:

a. A description of the consideration or planned consideration of the standard;

b. Whether the United States is participating or plans to participate in the consideration of the standard;

c. The agenda for United States participation, if any; and

d. The agency responsible for representing the United States with respect to the standard.

To obtain copies of the standards listed in attachment 1, please contact the Codex delegate or the U.S. Codex Office.

This notice also solicits public comment on standards that are currently under consideration or planned for consideration and recommendations for new standards. The delegate, in conjunction with the responsible agency, will take the comments received into account in participating in the consideration of the standards and in proposing matters to be considered by Codex.

The United States delegate will facilitate public participation in the United States Government's activities relating to Codex Alimentarius. The United States delegate will maintain a list of individuals, groups, and organizations that have expressed an interest in the activities of the Codex committees and will disseminate information regarding United States delegation activities to interested parties. This information will include the status of each agenda item; the United States Government's position or preliminary position on the agenda items; and the time and place of planning meetings and debriefing meetings following Codex committee sessions. In addition, the U.S. Codex Office makes much of the same

information available through its Web page, *http://www.fsis.usda.gov/Regulations_&_Policies/Codex_Alimentarius/index.asp*. If you would like to access or receive information about specific committees, please visit the Web page or notify the appropriate U.S. delegate or the U.S. Codex Office, Room 4861, South Agriculture Building, 1400 Independence Avenue SW., Washington, DC 20250–3700 (*uscodex@fsis.usda.gov*).

The information provided in Attachment 1 describes the status of Codex standard-setting activities by the Codex Committees for the time periods from June 1, 2011, to May 31, 2012, and June 1, 2012, to May 31, 2013. Attachment 2 provides a list of U.S. Codex Officials (including U.S. delegates and alternate delegates). A list of forthcoming Codex sessions may be found at: *http://www.codexalimentarius.org/meetings-reports/en/*.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp*.

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/*. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on: June 15, 2012.

Karen Stuck,

U.S. Manager for Codex Alimentarius.

Attachment 1

Sanitary and Phytosanitary Activities of Codex

Codex Alimentarius Commission and Executive Committee

The Codex Alimentarius Commission will hold its Thirty Fifth Session July 2–7, 2012, in Rome, Italy. At that time, it will consider standards, codes of practice, and related matters forwarded to the Commission by the general subject committees, commodity committees, and *ad hoc* Task Forces for adoption as Codex standards and guidance. The Commission will also consider the implementation status of the Codex Strategic Plan, the management of the Trust Fund for the Participation of Developing Countries and Countries in Transition in the Work of the Codex Alimentarius, as well as financial and budgetary issues.

Prior to the Commission meeting, the Executive Committee will meet at its Sixty-seventh Session on June 26–29, 2012. It is composed of the chairperson; vice-chairpersons; seven members elected from the Commission from each of the following geographic regions: Africa, Asia, Europe, Latin America and the Caribbean, Near East, North America, and South-West Pacific; and regional coordinators from the six regional committees. The United States is the elected representative from North America. The Executive Committee will conduct a critical review of the elaboration of Codex standards; consider applications from international non-governmental organizations for observer status in Codex; consider the Codex Strategic Plan and the capacity of the Secretariat; review matters arising from reports of Codex Committees and proposals for new work; and review the Food and Agriculture Organization and the World Health Organisation (FAO/WHO) Trust Fund for Enhanced Participation in Codex.

Responsible Agency: USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on Residues of Veterinary Drugs in Foods

The Codex Committee on Residues of Veterinary Drugs in Foods (CCRVDF) determines priorities for the consideration of residues of veterinary drugs in foods and recommends Maximum Residue Limits (MRLs) for veterinary drugs. The Committee also develops codes of practice, as may be required, and considers methods of sampling and analysis for the determination of veterinary drug residues in food. A veterinary drug is defined as any substance applied or administered to a food producing animal, such as meat or milk producing animals, poultry, fish or bees, whether used for therapeutic, prophylactic or diagnostic purposes, or for modification of physiological functions or behavior.

A Codex Maximum Residue Limit (MRL) for Residues of Veterinary Drugs is the maximum concentration of residue resulting from the use of a veterinary drug (expressed in mg/kg or ug/kg on a fresh weight basis) that is recommended by the Codex Alimentarius Commission to be permitted or recognized as acceptable in or on a food. An MRL is based on the type and amount of residue considered to be without any toxicological hazard for human health as expressed by the Acceptable Daily Intake (ADI) or on the basis of a temporary ADI that utilizes an additional safety factor. The MRL also takes into account other relative public health risks as well as food technological aspects.

When establishing an MRL, consideration is also given to residues that occur in food of plant origin or the environment. Furthermore, the MRL may be reduced to be consistent with good veterinary practices in the use of veterinary drugs and to the extent that practical analytical methods are available.

An Acceptable Daily Intake (ADI) is an estimate by the Joint FAO/WHO Expert Committee on Food Additives (JECFA) of the amount of a veterinary drug, expressed on a body weight basis, which can be ingested daily over a lifetime without appreciable health risk.

The 20th Session of the Committee met in San Juan, Puerto, Rico, on May 7–11, 2012. The reference document is REP12/RVDF. The results of the 20th session of the CCRVDF will be considered by the Commission at the 35th Session in July 2012.

To be considered for adoption:

- Proposed revision of the *Risk Analysis Principles Applied by the CCRVDF* and the *Risk Assessment Policy for Residues of Veterinary Drugs in Foods.*

To be considered for final adoption at Step 8 or 5/8:

- Draft MRLs for narasin (cattle tissues) at Step 8.
- Proposed draft MRLs for amoxicillin (cattle, sheep and pig tissues and cattle and sheep milk) and monensin (cattle liver) at Step 5/8.
- Proposed draft *Sampling Plans for Residue Control for Aquatic Animal Products and Derived Edible Products of Aquatic Origin* at Step 5/8.

The Committee will continue work on the following:

• Proposed draft MRLs for monepantel (sheep tissues).

• Proposed draft Maximum Residue Limits for apramycin (cattle and chicken kidney), derquantel (sheep tissues).

• Proposed draft guidelines on *Performance Characteristics for Multi-residue Methods.*

• *Priority List of Veterinary Drugs for Evaluation or Re-evaluation by JECFA.*

• *Risk Management Recommendations for Residues of Veterinary Drugs for which no ADI and/or MRLs has been recommended by JECFA due to Specific Human Health Concerns.*

• Proposed amendments to the *Terms of Reference of the Codex Committee on Residues of Veterinary Drugs in Foods.*

• Proposed concern form for the CCRVDF (format and policy procedure for its use).

• *Risk Analysis Policy on the Extrapolation of MRLs of Veterinary Drugs to Additional Species and Tissues.*

• Draft *Priority List of Veterinary Drugs Requiring Evaluation or Re-Evaluation by JECFA.*

• Database on countries needs for MRLs.

• Discussion paper on *Guidelines on the Establishment of MRLs or other Limits in Honey.*

Responsible Agencies: HHS/FDA/CVM; USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on Contaminants in Foods

The Codex Committee on Contaminants in Foods (CCCF) establishes or endorses permitted maximum levels (ML) and, where necessary, revises existing guidelines levels for contaminants and naturally occurring toxicants in food and feed; prepares priority lists of contaminants and naturally occurring toxicants for risk assessment by the Joint FAO/WHO Expert Committee on Food Additives; considers and elaborates methods of analysis and sampling for the determination of contaminants and naturally occurring toxicants in food and feed; considers and elaborates standards or codes of practice for related subjects; and considers other matters assigned to it by the Commission in relation to contaminants and naturally occurring toxicants in food and feed.

The Committee held its Sixth Session in Maastricht, The Netherlands, from March 26–30, 2012. The relevant document is REP12/CF. The following items are to be considered for adoption by the 35th Session of the Commission in July 2012. To be considered for adoption:

• *Risk Analysis Principles Applied by the Codex Committee on Contaminants in Foods.*

• Revision of the *Code of Practice for Source Directed Measures to Reduce Contamination of Food with Chemicals.*

• Revised definition of Contaminant.

To be considered at Step 8:

• Draft Maximum Levels for Melamine in Food (Liquid Infant Formula).

To be considered at Step 5/8:

• Proposed draft Maximum Level for Total Aflatoxins in Dried Figs, including Sampling Plan.

The Committee is continuing work on the following:

• Proposed draft Maximum Levels for Arsenic in Rice.

• Proposed draft Maximum Levels for Deoxynivalenol (DON) in Cereals and Cereal-based Products and Associated Sampling Plans.

• Editorial amendments to the *General Standard for Contaminants and Toxins in Food and Feed.*

The Committee decided to begin new work on the following items (Pending CAC approval):

• Proposed draft *Code of Practice for Weed Control to Prevent and Reduce Pyrolizidine Alkaloid Contamination in Food and Feed.*

• Proposed draft revision of the Maximum Levels for Lead in Fruit Juices, Milks and Secondary Milk Products, Infant Formula, Canned Fruits and Vegetables, Fruits and Cereal Grains (except buckwheat, canihua).

The Committee agreed to establish electronic working groups to prepare discussion papers on the following items:

• Proposed draft *Annex for Prevention and Reduction of Aflatoxins and Ochratoxin A in Sorghum* to the *Code of Practice for the Prevention and Reduction of Mycotoxin Contamination in Cereals.*

• Proposed draft *Code of Practice for the Prevention and Reduction of Ochratoxin A contamination in Cocoa.*

• Proposed draft *Code of Practice to Reduce the Presence of Hydrocyanic Acid in Cassava.*

• Proposed draft Maximum Levels for cassava and cassava products.

• Proposed draft levels for radionuclide's in food.

• The possibility of developing a code of practice for the prevention and reduction of arsenic in rice.

• To identify the gaps in the *Code of Practice for Prevention and Reduction of Mycotoxin Contamination in Cereals* and the need for a separate code of practice for fumonisins in maize and whether there are any other measures to control fumonisins in maize.

• Discussion paper on management practices to reduce exposure of animals to pyrrolizidine alkaloids; to reduce exposure of food producing animals (livestock and bees) containing plants; and to reduce the presence of PA's in commodities (raw and processed).

• The review of the guideline level for methylmecury in fish and predatory fish.

• Aflatoxins in cereals.

The Committee endorsed:

• The *Priority List of Contaminants and Naturally Occurring Toxicants Proposed for Evaluation by JECFA* and agreed to convene an inter-session working group immediately prior to its next meeting.

Responsible Agencies: HHS/FDA; USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on Food Additives

The Codex Committee on Food Additives (CCFA) establishes or endorses acceptable maximum levels (MLs) for individual food additives; prepares a priority list of food additives for risk assessment by the Joint FAO/WHO Expert Committee on Food Additives (JECFA); assigns functional classes to individual food additives; recommends specifications of identity and purity for food additives for adoption by the Codex Alimentarius Commission; considers methods of analysis for the determination of additives in food; and considers and elaborates standards or codes of practice for related subjects such as the labeling of food additives when sold as such. The 44th Session of the Committee met in Hangzhou, China, March 12–16, 2012. The relevant document is REP12/FA. Immediately prior to the Plenary Session, there was a 2-day physical Working Group on the General Standard for Food Additives (GSFA) chaired by the United States.

The following items discussed at the Plenary Session will be considered by the 35th Session of the Commission in July 2012. To be considered for adoption:

• *Principles for Risk Analysis applied by the Codex Committee on Food Additives.*

Title and descriptor of food categories 12.6.1 (Emulsified sauces and dips (e.g., mayonnaise, salad dressing, onion dip) and 16.0 (Prepared foods)) of the GSFA.

To be considered for adoption at Step 8:

• Specific draft food additive provisions of the GSFA.

• Proposed draft revision of the *Standard for Food Grade Salt* (CODEX STAN 150–1985).

To be considered for adoption at Step 5/8:

• Specific proposed draft food additive provisions of the GSFA.

• Proposed draft amendments to the *Codex Guideline on Class Names and International Numbering System for Food Additives* (CAC/GL 36–1989).

• Specifications for the identity and purity of food additives arising from the 74th JECFA meeting.

The Committee has recommended work on the following items be revoked:

• Specific food additive provisions of the GSFA.

• *Information on the Use of Food Additives in Foods* (CAC/MISC 1–1989).

• Listing of Potassium bromate (INS 924a) and Calcium bromate (INS 924b) in the *Codex Guideline on Class Names and International Numbering System for Food Additives* (CAC/GL 36–1989).

• Specifications for Potassium bromate (INS 924a).

The Committee recommended the work on the following items be discontinued:

• Specific draft and proposed draft food additive provisions of the GSFA.

The Committee will continue working on (with leads named, where appropriate):

• Draft and proposed draft food additives provisions of the GSFA.

• Amendments to the International Numbering System (INS) for food additives.

• Specifications for the identity and purity of food additives arising from the 76th JECFA meeting.

• Information document on the GSFA (Codex Secretariat).

• Information document on food additive provisions in commodity standards (Codex Secretariat).

• Information document on *Inventory of Substances used as Processing Aids (IPA),* updated list (New Zealand).

The Committee agreed to establish electronic Working Groups, with the named lead countries, on:

• Revision of the *Guidelines for the Evaluation of Food Additive Intakes* (CAC/GL 3–1989) (Brazil).

• Application of the decision-tree on the alignment of the food additive provisions of commodity standards and relevant provisions of the GSFA (Australia).

• The GSFA (United States), including:

○ Recommendations for the adoption, discontinuation and revocation of aluminum-containing food additives.

○ Recommendations for the implementation of the horizontal approach to the provisions in Tables 1 and 2 for food additives listed in Table 3 with the technological function ''acidity regulator''.

○ Elaboration of the horizontal approach for provisions in Table 1 and 2 for food additives listed in Table 3 with the technological function ''emulsifier, stabilizer and thickener''.

• Proposed prioritized list of colors for re-evaluation by JECFA (Canada).

• Criteria for entry of substances in the database on processing aids (New Zealand & China).

• Proposals for changes and additions to the INS (Iran).

The Committee also agreed to hold a physical Working Group on the GSFA immediately preceding the 45th session of CCFA. The United States is preparing the following proposals that will be considered at the physical Working Group:

• Application of Note 188 (''Not to exceed the maximum use level for acesulfame potassium (INS 960) singly or in combination with aspartame-acesulfame salt (INS 962).'' to provisions for acesulfame potassium and Note 191 (''Not to exceed the maximum use level for aspartame (INS 961) singly or in combination with aspartame-acesulfame salt (INS 962).'') to provisions for aspartame.

• Provisions for nisin in the sub-categories of food category 08.0 (Meat and meat products, including game).

• New and revised food additive provisions of the GSFA.

• Food additive provisions in food category 16.0 (Prepared foods).

• Two provisions for aspartame-acesulfame salt.

Responsible Agency: HHS/FDA.

U.S. Participation: Yes.

Codex Committee on Pesticide Residues

The Codex Committee on Pesticide Residues (CCPR) is responsible for establishing maximum limits for pesticide residues in specific food items or in groups of food; establishing maximum limits for pesticide residues in certain animal feeding stuffs moving in international trade where this is justified for reasons of protection of human health; preparing priority lists of pesticides for evaluation by the Joint FAO/WHO Meeting on Pesticide Residues (JMPR); considering methods of sampling and analysis for the determination of pesticide residues in food and feed; considering other matters in relation to the safety of food and feed containing pesticide residues and; establishing maximum limits for environmental and industrial contaminants showing chemical or other similarity to pesticides in specific food items or groups of food.

The 44th Session of the Committee met in Shanghai, China, on April 23–28, 2012. The relevant document is REP12/PR. The following items will be considered by the Commission at its 35th Session in July 2012. To be considered for adoption at Step 8:

• Draft Maximum Residue Limits (MRLs) for Pesticides.

• Draft revision of the *Classification of Food and Animal Feed: Fruit Commodity Groups.*

• Draft *Principles and Guidance for the Selection of Representative Commodities for the Extrapolation of Maximum Residue Limits for Pesticides to Commodity Groups* (Including Table 1: Examples of the Selection of Representative Commodities Fruit Commodity Groups).

To be considered at Step 5/8:

• Proposed draft MRLs for Pesticides.

The Committee will continue working on:

• Draft MRLs for Pesticides.

• Draft revision of the *Classification of Foods and Animal Feeds: Herbs-Edible Flowers.*

• Proposed draft revision of the *Classification of Food and Animal Feed: Selected Vegetable Commodity Groups.*

• Proposed draft MRLs for pesticides.

• Proposed draft MRLs for pesticides: Pilot project for JMPR recommendation of MRLs before national governments or other regional registration authorities for a global joint review chemical.

• JMPR resource issues in the provision of scientific advice to CCPR.

• Assessment of MRLs in Tea.

The Committee Agreed to the following Electronic Working Groups:

• Proposed draft revision of the *Classification of Food and Animal Feed: Other commodity groups.*

• Proposed draft Table 2: Examples of the selection of Representative Commodities—Selected Vegetable Groups (Draft Principles and Guidance for Selection of Representative Commodities for the Extrapolation of Maximum Residue Limits for Pesticides to Commodity Groups).

• Establishment of *Codex Priority Lists of Pesticides* (Evaluation of New Pesticides and Pesticides under Periodic Re-evaluation).

• Application of proportionality in selecting data for MRL estimation.

• Revision of the *Risk Analysis Principles applied by the Codex Committee on Pesticide Residues.*

• Discussion paper on further development of the criteria to facilitate the establishment of maximum residue limits for pesticides for minor crops/specialty crops including other related matters.

• Discussion paper on the development of performance criteria for suitability assessment of methods of analysis for pesticide residues.

The following items have been recommended for Revocation:

• Codex Maximum Residue Limits for Pesticides.

• *Analysis of Pesticide Residues: Recommended Methods.*

Responsible Agencies: EPA; USDA/AMS.

U.S. Participation: Yes.

Codex Committee on Methods of Analysis and Sampling

The Codex Committee on Methods of Analysis and Sampling (CCMAS) defines the criteria appropriate to Codex Methods of Analysis and Sampling; serves as a coordinating body for Codex with other international groups working on methods of analysis and sampling and quality assurance systems for laboratories; specifies, on the basis of final recommendations submitted to it by the bodies referred to above, reference methods of analysis and sampling appropriate to Codex standards which are generally applicable to a number of foods; considers, amends if necessary, and endorses as appropriate methods of analysis and sampling proposed by Codex commodity committees, except for methods of analysis and sampling for residues of pesticides or veterinary drugs in food, the assessment of microbiological quality and safety in food, and the assessment of specifications for food additives; elaborates sampling plans and procedures, as may be required; considers specific sampling and analysis problems submitted to it by the Commission or any of its Committees; and defines procedures, protocols, guidelines or related texts for the assessment of food laboratory proficiency, as well as quality assurance systems for laboratories.

The 33rd Session of the Committee met in Budapest, Hungary, March 5–9, 2012. The relevant document is REP12/MAS. The following will be sent to the CAC for inclusion in the *Procedural Manual:*

• The definition of ''proprietary method'' and the criteria to be added to the *Principles for the Establishment of Codex Methods of Analysis.*

To be considered for adoption at Step 5:

• The proposed draft *Principles for Use of Sampling and Testing in International Food Trade* (section on Principles).

The Committee will continue working on:

• The proposed draft *Principles for the Use of Sampling and Testing in International Food Trade* (except for the section on Principles).

Responsible Agencies: HHS/FDA; USDA/GIPSA.

U.S. Participation: Yes.

Codex Committee on Food Import and Export Inspection and Certification Systems

The Codex Committee on Food Import and Export Inspection and Certification Systems is responsible for developing principles and guidelines for food import and export inspection and certification systems, with a view to harmonizing methods and procedures that protect the health of consumers, ensure fair trading practices, and facilitate international trade in foodstuffs; developing principles and guidelines for the application of measures by the competent authorities of exporting and importing countries to provide assurance, where necessary, that foodstuffs comply with requirements, especially statutory health requirements; developing guidelines for the utilization, as and when appropriate, of quality assurance systems to ensure that foodstuffs conform with requirements and promote the recognition of these systems in facilitating trade in food products under bilateral/multilateral arrangements by countries; developing guidelines and criteria with respect to format, declarations, and language of such official certificates as countries may require with a view towards international harmonization; making recommendations for information exchange in relation to food import/export control; consulting as necessary with other international groups working on matters related to food inspection and certification systems; and considering other matters assigned to it by the Commission in relation to food inspection and certification systems.

The 19th Session of the Committee met in Cairns, Australia, October 17–21, 2011. The relevant document is REP12/FICS. The following items will be considered by the 35th Session of the Commission in July 2012. To be considered for adoption at Step 5:

• Proposed draft *Principles and Guidelines for National Food Control Systems.*

The Committee is continuing work on:

• Proposed draft *Principles and Guidelines for National Food Control Systems.*

• Discussion paper on the burden of documentation required by multiple questionnaires directed at exporting countries.

• Discussion paper on monitoring regulatory performance of national food control systems.

• Discussion paper on the need for further guidance on food safety emergencies and on proposed changes to CCFICS texts on emergencies and rejections as they apply to animal feed.

Responsible Agencies: HHS/FDA; USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on Food Labelling

The Codex Committee on Food Labelling drafts provisions on labeling applicable to all foods; considers, amends, and endorses draft specific provisions on labeling prepared by the Codex Committees drafting standards, codes of practice, and guidelines; and studies specific labeling problems assigned by the Codex Alimentarius Commission. The Committee also studies problems associated with the advertisement of food with particular reference to claims and misleading descriptions.

The Committee held its 40th Session in Ottawa, Ontario, Canada, on May 15–18, 2012. The reference document is REP 12/FL. The following items will be considered by the 35th Session of the Commission in July 2012. Items to be considered at Step 8:

• Draft definition for nutrient reference values for inclusion in the *Guidelines for Nutrition Labelling* (CAC/GL 2–1985).

• Use of ethylene for ripening of fruit for inclusion into *Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods* (CAC/GL 32–1999).

Items to be considered at Step 5:

• New Section 7.2 Non-Addition of Sodium Salts in the proposed draft revision of the *Guidelines for Use of Nutrition and Health Claims* (CAC/GL 23–1997).

Items to be considered at step 5/8:

• New Section 7.1 Non-Addition of Sugars in the proposed draft revision of the *Guidelines for Use of Nutrition and Health Claims* (CAC/GL 23–1997).

• New Section 7.3 Additional Conditions for Nutrient Content Claims and Comparative Claims (except for Section 7.2 Non-Addition of Sodium Salts at Step 5).

• Amend existing Sections 6.3 and 6.4 of the *Guidelines for Use of Nutrition and Health Claims* (CAC/GL 23–1997).

• New Section 6.5 for ''light'' in the proposed draft revision of the *Guidelines for Use of Nutrition and Health Claims* (CAC/GL 23–1997).

• Amend existing sections 3.1.1 and 3.1.2 to mandatory nutrition labeling for

nutrient declaration for all prepackaged foods in the proposed draft amendments to the *Guidelines on Nutrition Labelling* (CAC/GL 2–1985).

• Use of ethylene as flowering agent for pineapples and for degreening of citrus for the purpose of fruit fly prevention for inclusion into *Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods* (CAC/GL 32–1999).

• Spinosad, Copper Octanoate, Potassium Bicarbonate for inclusion into *Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods* (CAC/GL 32–1999).

The Committee is continuing work on:

• Use of ethylene as a sprouting inhibitor for onions and potatoes for inclusion into *Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods.*

• Organic Aquaculture for inclusion into *Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods.*

Responsible Agencies: HHS/FDA; USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on Food Hygiene

The Codex Committee on Food Hygiene (CCFH):

• Develops basic provisions on food hygiene applicable to all food or to specific food types;

• Considers and amends or endorses provisions on food hygiene contained in Codex commodity standards and codes of practice developed by other Codex commodity committees;

• Considers specific food hygiene problems assigned to it by the Commission;

• Suggests and prioritizes areas where there is a need for microbiological risk assessment at the international level and develops questions to be addressed by the risk assessors; and

• Considers microbiological risk management matters in relation to food hygiene and in relation to FAO/WHO risk assessments.

The Committee held its 43rd Session in Miami, Florida December 5–9, 2011. The reference document is REP 12/FH. The following items will be considered by the Commission at its 35th Session in July 2012. To be considered for adoption:

• Proposed amendment to the *Principles and Guidelines for the Conduct of Microbiological Risk Assessment.*

• Proposed revision to the *Risk Analysis Principles and Procedures Applied by the Codex Committee on Food Hygiene.*

To be considered for adoption at Step 5/8:

• Proposed draft *Guidelines on the Application of General Principles of Food Hygiene to the Control of Viruses in Food.*

• Proposed draft *Annex on Melons* to the *Code of Hygienic Practice for Fresh Fruits and Vegetables.*

The Committee will continue working on:

• Proposed revision of *Principles for the Establishment and Application of Microbiological Criteria for Foods.*

• Proposed draft *Guidelines for Control of Specific Zoonotic Parasites in Meat: Trichinella spiralis and Cysticercus bovis.*

The Committee agreed to the development of discussion papers on the following topics:

• Code of hygienic practice for low moisture food.

• New work and periodic review/ revision of codes of hygienic practice.

The Committee agreed to begin new work on the following, pending approval by the CAC:

• Revision of the *Code of Hygienic Practice for Spices and Dried Aromatic Plants.*

• *Annex on Berries* to the *Code of Hygienic Practice for Fresh Fruits and Vegetables.*

Responsible Agencies: HHS/FDA; USDA/FSIS

U.S. Participation: Yes.

Codex Committee on Fresh Fruits and Vegetables

The Codex Committee on Fresh Fruits and Vegetables is responsible for elaborating worldwide standards and codes of practice as may be appropriate for fresh fruits and vegetables; for consulting with the UNECE Working Party on Agricultural Quality Standards in the elaboration of worldwide standards and codes of practice, with particular regard to ensuring that there is no duplication of standards or codes of practice and that they follow the same broad format; and for consulting, as necessary, with other international organizations which are active in the area of standardization of fresh fruits and vegetables.

The Committee will hold its 17th Session in Mexico City, Mexico, on September 3–7, 2012.

The Committee will work on the following items:

• Draft *Standard for Avocado.*

• Proposed draft *Standard for Pomegranate.*

• Proposed draft *Standard for Golden Passion Fruit.*

• Proposed layout for *Codex Standards for Fresh Fruits and Vegetables* (including matters relating to point of application and quality tolerances at import/export control points).

• Proposals for new work on *Codex Standards for Fresh Fruits and Vegetables.*

Responsible Agencies: USDA/AMS; HHS/FDA.

U.S. Participation: Yes.

Codex Committee on Nutrition and Foods for Special Dietary Uses

The Codex Committee on Nutrition and Foods for Special Dietary Uses (CCNFSDU) is responsible for studying nutrition issues referred to it by the Codex Alimentarius Commission. The Committee also drafts general provisions, as appropriate, on nutritional aspects of all foods and develops standards, guidelines, or related texts for foods for special dietary uses in cooperation with other committees where necessary; considers, amends if necessary, and endorses provisions on nutritional aspects proposed for inclusion in Codex standards, guidelines, and related texts.

The Committee held its 33rd Session in Bad Soden am Taunus, Germany, on November 14–18, 2011. The reference document is REP 12/NSFDU. The following items will be considered by the Commission at its 35th Session in July 2012. To be considered for final adoption at Step 5/8:

• Proposed draft *Nutrient Reference Values* (NRVs). *To be considered for adoption at Step 5:*

• Proposed draft revision of the *Guidelines on Formulated Supplementary Foods for Older Infants and Young Children.*

The Committee will continue working on:

• *General Principles for Establishing Nutrient Reference Values for Nutrients Associated with Risk of Diet-Related Non-communicable Diseases for General Population.*

• Proposed draft *Additional or Revised Nutrient Reference Values for Labeling Purposes* in the *Codex Guidelines on Nutrition Labeling.*

• Proposed draft revision of the *Codex General Principles for the Addition of Essential Nutrients to Foods.*

• Proposed draft amendment of the *Standard for Processed Cereal Based Foods for Infants and Young Children* to include a New Part B for Underweight Children.

• Proposal to review the *Codex Standard for Follow-up Formula.*

• Proposed draft revision of the list of food additives.

Responsible Agencies: HHS/FDA; USDA/ARS.

U.S. Participation: Yes.

Codex Committee on Fats and Oils

The Codex Committee on Fats and Oils (CCFO) is responsible for elaborating worldwide standards for fats and oils of animal, vegetable, and marine origin, including margarine and olive oil.

The Committee will hold its 23rd Session in Malaysia, on February 25–March 1, 2013. The Committee is currently working on the following items:

- Development of a *Standard for Fish Oils.*
- Proposed draft amendment to the *Standard for Named Vegetable Oils: Rice Bran Oil.*

The Committee is also working in electronic Working Groups on the following discussion papers to be presented at the next Session in 2013:

- New work proposal to add High Oleic Acid Palm Oil to the *Standard for Named Vegetable Oils.*
- New work proposal to amend the *Standard for Named Vegetable Oils: Sunflower Seed Oils.*
- New work proposal to include High Oleic Soybean Oil in the *Standard for Named Vegetable Oils.*
- New work to amend the campesterol levels listed in the *Codex Standard for Olive Oil.*

Responsible Agencies: HHS/FDA; USDA/ARS.

U.S. Participation: Yes.

Codex Committee on Processed Fruits and Vegetables

The Codex Committee on Processed Fruits and Vegetables (CCPFV) is responsible for elaborating worldwide standards and related text for all types of processed fruits and vegetables including but not limited to canned, dried and frozen products as well as fruit and vegetable juices and nectars.

The 26th Session of the CCPFV will meet in Montego Bay, Jamaica, on October 15–19, 2012. The Committee will work on the following items:

- Matters referred to the Committee by the Codex Alimentarius Commission and Codex committees.
- Proposed draft *Codex Standard for Table Olives.*
- Proposed draft *Codex Standard for Certain Canned Fruits* (revision of remaining individual standards for canned fruits) (Step 4).
- Proposed draft *Codex Standard for Certain Quick Frozen Vegetables* (revision of individual standards for quick frozen vegetables) (Step 4).
- Proposed draft Sampling Plans including *Metrological Provisions for Controlling Minimum Drained Weight of Canned Fruits and Vegetables in Packing Media* (Step 4).
- *Food Additive Provisions for Processed Fruits and Vegetables:* Additional provisions for inclusion in selected adopted and under development standards.
- Matters relating to selected Codex standards for processed fruits and vegetables.
- Discussion paper on the possible extension of the territorial application of the *Codex Regional Standard for Ginseng Products.*
- Discussion paper on the development of a *Codex Standard for Chemically Flavored Water-based Drinks.*
- Status of work on the revision of Codex standards for processed fruits and vegetables.

Responsible Agencies: USDA/AMS; HHS/FDA.

U.S. Participation: Yes.

Codex Committee on Sugars

The Codex Committee on Sugars is responsible for elaborating worldwide standards for all types of sugar and sugar products. The Committee had been adjourned *sine die,* but became active again following the request from Colombia at the 34th Session of the Codex Alimentarius Commission (2011).

The Committee has established an electronic Working Group (led by Colombia) to work on the following item:

- Standard for Panela

Responsible Agencies: HHS/FDA.

U.S. Participation: Yes.

Certain Codex Commodity Committees

Several Codex Alimentarius Commodity Committees have adjourned *sine die.* The following Committees fall into this category:

- Cereals, Pulses and Legumes

Responsible Agency: HHS/FDA.

U.S. Participation: Yes.

- Cocoa Products and Chocolate

Responsible Agency: HHS/FDA.

U.S. Participation: Yes.

- Meat Hygiene

Responsible Agency: USDA/FSIS.

U.S. Participation: Yes.

- Milk and Milk Products

Responsible Agencies: USDA/AMS; HHS/FDA.

U.S. Participation: Yes.

- Natural Mineral Waters

Responsible Agency: HHS/FDA.

U.S. Participation: Yes.

- Vegetable Proteins

Responsible Agency: USDA/ARS.

U.S. Participation: Yes.

Ad hoc Intergovernmental Task Force on Animal Feeding

The objective of the ad hoc Intergovernmental Task Force on Animal Feeding (TFAF) is to ensure the safety and quality of foods of animal origin. Therefore, the Task Force develops guidelines or standards, as appropriate, on Good Animal Feeding practices. The Task Force was re-activated in 2011 for the purpose of: (a) Developing guidelines, intended for governments, on how to apply the existing Codex risk assessment methodologies to the various types of hazards related to contaminants/residues in feed ingredients, such as feed additives used in feeding stuffs for food producing animals, and using specific science-based risk assessment criteria to apply to feed contaminants/residues; and (b) developing a prioritized list of hazards in feed ingredients and feed additives for governmental use.

The Committee held its 6th session in Berne, Switzerland, on February 20–24, 2012. The relevant document is REP 12/AF. The following items will be considered at the 35th session of the Codex Alimentarius Commission in July 2012. To be considered at Step 5:

- Proposed draft *Guidelines on the Application of Risk Assessment for Feed.*

The Committee will continue working on:

- Proposed draft *Guidance for Use by Governments in Prioritizing the National Feed Hazards* (former *Prioritized List of Hazard in Feed*)

Responsible Agencies: HHS/FDA; USDA/FSIS.

U.S. Participation: Yes.

FAO/WHO Regional Coordinating Committees

The FAO/WHO Regional Coordinating Committees define the problems and needs of the regions concerning food standards and food control; promote within the Committee contacts for the mutual exchange of information on proposed regulatory initiatives and problems arising from food control and stimulate the strengthening of food control infrastructures; recommend to the Commission the development of worldwide standards for products of interest to the region, including products considered by the Committees to have an international market potential in the future; develop regional standards for food products moving exclusively or almost exclusively in intra-regional trade; draw the attention of the Commission to any aspects of the Commission's work of particular significance to the region; promote coordination of all regional food standards work undertaken by international governmental and non-

governmental organizations within each region; exercise a general coordinating role for the region and such other functions as may be entrusted to it by the Commission; and promote the use of Codex standards and related texts by members.

There are six regional coordinating committees:

Coordinating Committee for Africa
Coordinating Committee for Asia
Coordinating Committee for Europe
Coordinating Committee for Latin America and the Caribbean
Coordinating Committee for the Near East
Coordinating Committee for North America and the Southwest

Coordinating Committee for Africa

The Committee (CCAfrica) will hold its 20th session in Cameroon, from January 29–February 1, 2013.

Responsible Agency: USDA/FSIS.

U.S. Participation: Yes (as observer).

Coordinating Committee for Asia

The Committee (CCAsia) will hold its 18th session in Tokyo, Japan, from November 5–9, 2012.

Responsible Agency: USDA/FSIS.

U.S. Participation: Yes (as observer).

Coordinating Committee for Europe

The Committee (CCEurope) will hold its 28th session in Batumi, Georgia, from September 25–28, 2012.

Responsible Agency: USDA/FSIS.

U.S. Participation: Yes (as observer).

Coordinating Committee for Latin America and the Caribbean

The Coordinating Committee for Latin America and the Caribbean (CCLAC) will hold its 18th session in Costa Rica, from November 19–23, 2012.

Responsible Agency: USDA/FSIS.

U.S. Participation: Yes (as observer).

Coordinating Committee for the Near East

The Committee (CCNEA) will hold its 7th session in Beirut, Lebanon, from January 21–25, 2013.

Responsible Agency: USDA/FSIS.

U.S. Participation: Yes (as observer).

Coordinating Committee for North America and the Southwest Pacific (CCNASWP)

The Committee (CCNASWP) will hold its 12th Session in Madang, Papua New Guinea, from September 19–22, 2012.

Responsible Agency: USDA/FSIS.

U.S. Participation: Yes.

Contact:

Karen Stuck, United States Manager for Codex, U.S. Department of Agriculture, Office of Food Safety, Room 4861, South Agriculture Building, 1400 Independence Avenue SW., Washington, DC 20250–3700, Phone: (202) 205–7760, Fax: (202) 720–3157, Email: *karen.stuck@osec.usda.gov.*

Attachment 2

U.S. Codex Alimentarius Officials

Codex Chairpersons From the United States

Codex Committee on Food Hygiene

Emilio Esteban, DVM, MBA, MPVM, Ph.D., Executive Associate for Laboratory Services, Office of Public Health Science, Food Safety and Inspection Service, U.S. Department of Agriculture, 950 College Station Road, Athens, GA 30605, Phone: (706) 546–3429, Fax: (706) 546–3428, Email: *emilio.esteban@fsis.usda.gov.*

Codex Committee on Processed Fruits and Vegetables

Richard Boyd, Chief, Defense Contract Inspection Branch, Processed Products Division, Fruit and Vegetable Program, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Mail Stop 0247, Room 0726–South Building, Washington, DC 20250, Phone: (202) 720–5021, Fax: (202) 690–1527, Email: *richard.boyd@ams.usda.gov.*

Codex Committee on Residues of Veterinary Drugs in Foods

Steven D. Vaughn, DVM, Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine, U.S. Food and Drug Administration, MPN 1, Room 236, 7520 Standish Place, Rockville, Maryland 20855, Phone: (240) 276–8300, Fax: (240) 276–8242, Email: *Steven.Vaughn@fda.hhs.gov.*

Listing of U.S. Delegates and Alternates Worldwide General Subject Codex Committees

Codex Committee on Contaminants in Foods

(Host Government—the Netherlands)

U.S. Delegate

Nega Beru, Ph.D., Director, Office of Food Safety (HFS–300), Center for Food Safety and Applied Nutrition, U.S. Food and Drug Administration, 5100 Paint Branch Parkway, College Park, MD 20740, Phone: (240) 402–1700, Fax: (301) 436–2651, Email: *Nega.Beru@fda.hhs.gov.*

Alternate Delegate

Kerry Dearfield, Ph.D., Scientific Advisor for Risk Assessment, Office of Public Health Science, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 9–195, PP 3 (Mail Stop 3766), 1400 Independence Avenue SW., Washington, DC 20250, Phone: (202) 690–6451, Fax: (202) 690–6337, Email: *Kerry.Dearfield@fsis.usda.gov.*

Codex Committee on Food Additives

(Host Government—China)

U.S. Delegate

Dennis M. Keefe, Ph.D., Office of Premarket Approval, Center for Food Safety and Applied Nutrition, U.S. Food and Drug Administration (HFS–200), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone: (240) 402–1200, Fax: (301) 436–2972, Email: *dennis.keefe@fda.hhs.gov.*

Alternate Delegate

Susan E. Carberry, Ph.D., Supervisory Chemist, Division of Petition Review, Office of Food Additive Safety (HFS–265), Center for Food Safety and Applied Nutrition, U.S. Food and Drug Administration, 5100 Paint Branch Parkway, College Park, MD 20740, Phone: (240) 402–1269, Fax: (301) 436–2972, Email: *Susan.Carberry@fda.hhs.gov.*

Codex Committee on Food Hygiene

(Host Government—United States)

U.S. Delegate

Jenny Scott, Senior Advisor, Office of Food Safety, Center for Food Safety and Applied Nutrition, U.S. Food and Drug Administration, 5100 Paint Branch Parkway, HFS–300, Room 3B–014, College Park, MD 20740–3835, Phone: (240) 402–2166, Fax: (202) 436–2632, Email: *Jenny.Scott@fda.hhs.gov.*

Alternate Delegates

Kerry Dearfield, Ph.D., Scientific Advisor for Risk Assessment, Office of Public Health Science, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 9–195, PP 3 (Mail Stop 3766), 1400 Independence Avenue SW., Washington, DC 20250, Phone: (202) 690–6451, Fax: (202) 690–6337, Email: *Kerry.Dearfield@fsis.usda.gov.*

Dr. Joyce Saltsman, Interdisciplinary Scientist, Office of Food Safety (HFS–317), Center for Food Safety and Applied Nutrition, U.S. Food and Drug Administration, 5100 Paint Branch Parkway, College Park, MD 20740, Phone: (240) 402–1641, Fax: (301) 436–2632, Email: *Joyce.Saltsman@fda.hhs.gov.*

Codex Committee on Food Import and Export Inspection and Certification Systems

(Host Government—Australia)

U.S. Delegate

Mary Stanley, Director, International Policy Division, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 2925, South Agriculture Building, 1400 Independence Avenue SW., Washington, DC 20250, Phone: (202) 720–0287, Fax: (202) 720–4929, Email: *Mary.Stanley@fsis.usda.gov.*

Alternate Delegate

H. Michael Wehr, Senior Advisor and Codex Program Coordinator, International Affairs Staff, Center for Food Safety and Applied Nutrition, U.S. Food and Drug Administration, 5100 Paint Branch Parkway (HFS–550), College Park, MD 20740, Phone: (240) 402–1724, Fax: (301) 436–2618, Email: *Michael.wehr@fda.hhs.gov.*

Codex Committee on Food Labeling

(Host Government—Canada)

U.S. Delegate

Barbara O. Schneeman, Ph.D., Director, Office of Nutrition, Labeling, and Dietary Supplements, Center for Food Safety and Applied Nutrition, U.S. Food and Drug Administration, 5100 Paint Branch Parkway (HFS–800), College Park, MD 20740, Phone: (240) 402–2373, Fax: (301) 436–2636, Email: *barbara.schneeman@fda.hhs.gov.*

Alternate Delegate

Jeffrey Canavan, Deputy Director, Labeling and Program Delivery Division, Food Safety and Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue SW.—Stop 5273, Patriots Plaza 3, 8th Floor-161A, Washington, DC 20250, Phone: (301) 504–0860, Fax: (202) 245–4792, Email: *jeff.canavan@fsis.usda.gov.*

Codex Committee on General Principles

(Host Government—France)

U.S. Delegate

Note: A member of the Steering Committee heads the delegation to meetings of the General Principles Committee.

Codex Committee on Methods of Analysis and Sampling

(Host Government—Hungary)

U.S. Delegate

Gregory O. Noonan, Ph.D., Research Chemist, Division of Analytical Chemistry, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Parkway, College Park, MD 20740, Phone: 240–402–2250, Fax: 301–436–2634, Email: *Gregory.Noonan@fda.hhs.gov.*

Alternate Delegate

David B. Funk, Deputy Director, Chief Scientist, GIPSA, U.S. Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, Technology & Science Division, 10383 Ambassador Dr., Kansas City, MO 64153, Phone: (816) 891–0473, Fax: (816) 891–8070, Email: *David.b.funk@usda.gov.*

Codex Committee on Nutrition and Food for Special Dietary Uses

(Host Government—Germany)

U.S. Delegate

Barbara O. Schneeman, Ph.D., Director, Office of Nutrition, Labeling and Dietary Supplements, Center for Food Safety and Applied Nutrition, U.S. Food and Drug Administration, 5100 Paint Branch Highway (HFS–800), College Park, MD 20740, Phone: (240) 402–2373, Fax: (301) 436–2636, Email: *barbara.schneeman@fda.hhs.gov.*

Alternate Delegate

Allison Yates, Ph.D., Associate Director, Beltsville Human Nutrition Research Center, Agricultural Research Service, U.S. Department of Agriculture, 10300 Baltimore Avenue, Bldg 307C, Room 117, Beltsville, MD 20705, Phone: (301) 504–8157, Fax: (301) 504–9381, Email: *Allison.Yates@ars.usda.gov.*

Codex Committee on Pesticide Residues

(Host Government—China)

U.S. Delegate

Lois Rossi, Director of Registration Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC 20460, Phone: (703) 305–5447, Fax: (703) 305–6920, Email: *rossi.lois@epa.gov.*

Alternate Delegate

Dr. Pat Basu, Senior Leader, Chemistry, Toxicology & Related Sciences, Office of Public Health Science, Food Safety and Inspection Service, U.S. Department of Agriculture, Patriots Plaza III, Room 9–205, 1400 Independence Ave SW., Washington, DC 20250–3766, Phone: (202) 690–6558, Fax: (202) 690–2364, Email: *Pat.Basu@fsis.usda.gov.*

Codex Committee on Residues of Veterinary Drugs in Foods

(Host Government—United States)

U.S. Delegate

Dr. Kevin Greenlees, Senior Advisor for Science & Policy, Office of New Animal Drug Evaluation, HFV–100, Center for Veterinary Medicine, U.S. Food and Drug Administration, 7520 Standish Place, Rockville, MD 20855, Phone: (240) 276–8214, Fax: (240) 276–9538, Email: *Kevin.Greenlees@fda.hhs.gov.*

Alternate Delegate

Dr. Charles Pixley, Director, Laboratory Quality Assurance Division, Office of Public Health Science, Food Safety and Inspection Service, U.S. Department of Agriculture, 950 College Station Road, Athens, GA 30605, Phone: (706) 546–3559, Fax: (706) 546–3452, Email: *charles.pixley@fsis.usda.gov.*

Worldwide Commodity Codex Committees (Active)

Codex Committee on Fats and Oils

(Host Government—Malaysia)

U.S. Delegate

Martin J. Stutsman, J.D., Office of Food Safety (HFS–317), Center for Food Safety and Applied Nutrition, U.S. Food and Drug Administration, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone: (240) 402–1642, Fax: (301) 436–2651, Email: *Martin.Stutsman@fda.hhs.gov.*

Alternate Delegate

Robert A. Moreau, Ph.D., Research Chemist, Eastern Regional Research Center, Agricultural Research Service, U.S. Department of Agriculture, 600 East Mermaid Lane, Wyndmoor, PA 19038, Phone: (215) 233–6428, Fax: (215) 233–6406, Email: *robert.moreau@ars.usda.gov.*

Codex Committee on Fish and Fishery Products

(Host Government—Norway)

Delegates

Timothy Hansen, Director, Seafood Inspection Program, National Marine Fisheries Services, National Oceanic and Atmospheric Administration, 1315 East West Highway SSMC#3, Silver Spring, MD 20910, Phone: (301) 713–2355, Fax: (301) 713–1081, Email: *Timothy.Hansen@noaa.gov.*

Dr. William Jones, Director, Division of Seafood Safety, Office of Food Safety (HFS–325), U.S. Food and Drug Administration, 5100 Paint Branch Parkway, College Park, MD 20740, Phone: (240) 402–2300, Fax: (301) 436–2601, Email: *William.Jones@fda.hhs.gov.*

Codex Committee on Fresh Fruits and Vegetables

(Host Government—Mexico)

U.S. Delegate

Dorian LaFond, International Standards Coordinator, Fruit and Vegetables Division, Agricultural Marketing Service, U.S. Department of Agriculture, Stop 0235–Room 2086, South Agriculture Building, 1400 Independence Avenue SW., Washington, DC 20250–0235, Phone: (202) 690–4944, Fax: (202) 720–0016, Email: *dorian.lafond@usda.gov.*

Alternate Delegate

Dongmin (Don) Mu, Product Evaluation and Labeling Team, Food Labeling and Standards Staff, Office of Nutrition, Labeling and Dietary Supplements, U.S. Food and Drug Administration, 5100 Paint Branch Parkway, College Park, MD 20740, Phone: (240) 402–1775, Fax: (301) 436–2636, Email: *dongmin.mu@fda.hhs.gov.*

Codex Committee on Processed Fruits and Vegetables

(Host Government—United States)

U.S. Delegate

Dorian LaFond, International Standards Coordinator, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Stop-0235, Room 2086, South Agriculture Building, 1400 Independence Avenue SW., Washington, DC 20250–0235, Phone: (202) 690–4944, Fax: (202) 720–0016, Email: *dorian.lafond@usda.gov.*

Alternate Delegate

Paul South, Ph.D., Office of Food Safety, Center for Food Safety and Applied Nutrition, U.S. Food and Drug Administration, 5100 Paint Branch Parkway, College Park, MD 20740, Phone: (240) 402–1640, Fax: (301) 436–2561, Email: *paul.south@fda.hhs.gov.*

Codex Committee on Sugars

(Host Government—United Kingdom)

U.S. Delegate

Martin J. Stutsman, J.D., Office of Food Safety (HFS–317), Center for Food Safety and Applied Nutrition, U.S. Food and Drug Administration, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone: (240) 402–1642, Fax: (301) 436–2651, Email: *Martin.Stutsman@fda.hhs.gov.*

Worldwide Commodity Codex Committees (Adjourned)

Codex Committee on Cocoa Products and Chocolate (Adjourned Sine die)

(Host Government—Switzerland)

U.S. Delegate

Michelle Smith, Ph.D., Food Technologist, Office of Plant and Dairy Foods and Beverages, Center for Food Safety and Applied Nutrition, U.S. Food and Drug Administration (HFS–306), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone: (240) 402–2024, Fax: (301) 436–2651, Email: *michelle.smith@fda.hhs.gov.*

Cereals, Pulses and Legumes (Adjourned Sine die)

(Host Government—United States)

Delegate

Henry Kim, Ph.D., Supervisory Chemist, Division of Plant Product Safety, Office of Plant and Dairy Foods, Center for Food Safety and Applied Nutrition, U.S. Food and Drug Administration, 5100 Paint Branch Parkway, College Park, MD 20740, Phone: (240) 402–2023, Fax: (301) 436–2651, *henry.kim@fda.hhs.gov.*

Codex Committee on Meat Hygiene (Adjourned Sine die)

(Host Government—New Zealand)

U.S. Delegate

VACANT

Codex Committee on Milk and Milk Products (Adjourned Sine die)

(Host Government—New Zealand)

U.S. Delegate

Duane Spomer, Chief, Safety, Security and Emergency Preparedness Branch, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2095, South Agriculture Building, 1400 Independence Avenue SW., Washington, DC 20250, Phone: (202) 720–1861, Fax: (202) 205–5772, Email: *duane.spomer@ams.usda.gov.*

Alternate Delegate

John F. Sheehan, Director, Division of Plant and Dairy Food Safety, Office of Food Safety, Center for Food Safety and Applied Nutrition, U.S. Food and Drug Administration (HFS–3 15), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740, Phone: (240) 402–1488, Fax: (301) 436–2632, Email: *john.sheehan@fda.hhs.gov*

Codex Committee on Natural Mineral Waters

(Host Government—Switzerland)

U.S. Delegate

Lauren Posnick Robin, Sc.D., Review Chemist, Office of Food Safety, Center for Food Safety and Applied Nutrition, U.S. Food and Drug Administration, Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone: (240) 402–1639, Fax: (301) 301–436–2632, Email: *Lauren.Robin@fda.hhs.gov.*

Codex Committee on Vegetable Proteins (Adjourned Sine die)

(Host Government—Canada)

U.S. Delegate

Vacant

AdHoc Intergovernmental Task Forces

Ad Hoc Intergovernmental Task Force on Animal Feeding

(Host government—Switzerland)

Delegate

Daniel G. McChesney, Ph.D., Director, Office of Surveillance & Compliance, Center for Veterinary Medicine, U.S. Food and Drug Administration, 7529 Standish Place, Rockville, MD 20855, Phone: (240) 453–6830, Fax: (240) 453–6880, Email: *Daniel.McChesney@fda.hhs.gov.*

Alternate

Dr. Patty Bennett, Branch Chief, Risk Assessment Division, Office of Public Health Science, Food Safety and Inspection Service, U.S. Department of Agriculture, 901 Aerospace Center, Washington, DC 20250, Phone: (202) 690–6189, Email: *patty.bennett@fsis.usda.gov.*

[FR Doc. 2012–15002 Filed 6–15–12; 4:15 pm]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Questa Ranger District, Carson National Forest; Taos County, NM; Taos Ski Valley's 2010 Master Development Plan—Phase 1 Projects; Additional Filings

AGENCY: Forest Service, USDA.

ACTION: Notice; correction.

SUMMARY: The USDA Forest Service published in the **Federal Register** a Notice of Intent (75 FR 71414–71415, November 23, 2010) to prepare an environmental impact statement for a proposal to authorize several (Phase 1) projects included in the Taos Ski Valley (TSV) 2010 Master Development Plan (MDP). All proposed projects would be within the existing special use permit (SUP) area.

A corrected notice of intent was published in the **Federal Register** on September 29, 2011 (76 FR 60451) modifying the proposed action to relocate the snow tubing area and add the relocation of an existing footbridge across the Rio Hondo.

The Environmental Protection Agency (EPA) published a notice of availability (NOA) for the draft EIS in the **Federal Register** on January 13, 2012 (77 FR 2060).

Revised Dates: The final environmental impact statement (final EIS) and record of decision (ROD) are expected in July 2012.

Change in Responsible Official: In addition, this notice changes the official responsible for the EIS and subsequent record of decision to Acting Forest Supervisor Diana Trujillo, Carson National Forest.

ADDRESSES: Send written comments to Carson National Forest, Taos Ski Valley MDP—Phase 1 Projects, 208 Cruz Alta Road, Taos, NM 87571. Comments may also be sent via email to *comments-southwestern-carson@fs.fed.us* or facsimile to (575) 758–6213.

FOR FURTHER INFORMATION CONTACT: Additional information related to the proposed project can be obtained from the Forest's Web page at: *http://www.fs.fed.us/r3/carson/.* The Forest Service contact is Audrey Kuykendall, who can be reached at 575–758–6200.

Dated: June 13, 2012.

Diana M. Trujillo,

Acting Carson National Forest Supervisor.

[FR Doc. 2012–14995 Filed 6–19–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection for the Floriculture Survey. Revision to burden hours will be needed due to changes in the size of the target population, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by August 20, 2012 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0093, by any of the following methods:

- *Email: ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *Fax:* (202) 720–6396.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION: *Title:* Floriculture Survey.

OMB Control Number: 0535–0093.

Expiration Date of Approval: October 31, 2012.

Type of Request: Intent to Seek Approval to Revise and Extend an Information Collection for 3 years.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production, prices, and disposition. The Floriculture Survey is currently conducted in 15 States and obtains basic agricultural statistics on production and value of floriculture products. The target population for this survey is all operations with production and sales of at least $10,000 of floriculture products. New floriculture operations that are discovered during the 2012 Census of Agriculture will be added to the list of potential respondents. The retail and wholesale quantity and value of sales are collected for fresh cut flowers, potted flowering plants, foliage plants, annual bedding/garden plants, herbaceous perennials, cut cultivated florist greens, propagative floriculture material, and unfinished plants. Additional detail on area in production, operation value of sales, and agricultural workers is included. Content changes are minimal year to year, but always managed to avoid significant changes to the length and burden associated with each questionnaire. These statistics are used by the U.S. Department of Agriculture to help administer programs and by growers and marketers in making production and marketing decisions.

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320. NASS also complies with OMB Implementation Guidance, ''Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),'' 72 CFR 33362, June 15, 2007.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average between 10 and 60 minutes per respondent. Operations with less than $100,000 in sales of floriculture products respond to a reduced number of questions related to operation characteristics while operations with sales greater than $100,000 complete the entire questionnaire.

Respondents: Farms and businesses.

Estimated Number of Respondents: 9,000.

Estimated Total Annual Burden on Respondents: 4,500 hours.

Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS Clearance Officer, at *ombofficer@nass.usda.gov* or at (202) 690–2388.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the

burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological, or other forms of information technology collection techniques.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, May 22, 2012.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. 2012–14958 Filed 6–19–12; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

South Mississippi Electric Cooperative: Plant Ratcliff, Kemper County Integrated Gasification Combined-Cycle (IGCC) Project

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Adoption of a Final Environmental Impact Statement.

SUMMARY: The South Mississippi Electric Power Association (SMEPA), a rural electric generation and transmission cooperative, has approached the USDA Rural Utilities Service (RUS, the Agency) for financial assistance through which SMEPA would acquire a 17.5% undivided ownership interest in Plant Ratcliff, an Integrated Gasification Combined-Cycle (IGCC) Project currently under construction in Kemper County, Mississippi (hereinafter ''the Project'') and owned by Mississippi Power Company (MPCo). In accordance with RUS Environmental Policies and Procedures, 7 CFR 1794, RUS has discretion in determining whether a proposal is subject to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, when potential borrowers will have only partial ownership of a project for which they are requesting financing (7 CFR 1794.20, Control). Though acknowledging that RUS financing will provide SMEPA with significantly limited control of the Project, RUS considers the Project subject to NEPA and to the National Historic Preservation Act (NHPA) and its implementing regulations at 36 CFR part 800. This notice documents the efforts undertaken by RUS to ensure compliance with NEPA, NHPA, and all other applicable environmental laws and regulations through the adoption of the Final Environmental Impact Statement (FEIS) prepared for the Project by the United States Department of Energy (DOE) in cooperation with the U.S. Army Corps of Engineers (USACE).

DATES: Written comments on the Adoption will be accepted for 30 days following the publication of the U.S. Environmental Protection Agency's Notice of Adoption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: A link to FEIS will be posted on the RUS Web site, *http://www.rurdev.usda.gov/UWP-eis4.htm.* To obtain additional information or provide comments, please contact: Emily Orler, Environmental Protection Specialist, USDA Rural Utilities Service, 1400 Independence Avenue SW., Stop 1571, Washington, DC 20250–1571 or email: *emily.orler@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: The Project will produce 582 megawatts (MW) of power through the use of clean coal IGCC technology. Lignite mined locally by North American Coal Corporation (NACC) will be converted into a synthesis gas (syngas) that will drive two gas combustion turbines. Heat recovery steam generators will convert excess heat from primary combustion to drive a steam turbine that will produce additional electrical power. The Project will demonstrate greater efficiencies and reduced carbon dioxide (CO_2), sulfur dioxide (SO_2), nitrogen oxide (NO_X), mercury, and particulate emissions as compared to conventional lignite-fired electrical power plants. In addition to the IGCC facility and the mining operation, the Project requires the construction and/or upgrading of a natural gas supply pipeline, a reclaimed water supply pipeline, a CO_2 pipeline, and electrical transmission infrastructure including power lines and substations.

Southern Company, in cooperation with two of its subsidiaries, Southern Company Services and Mississippi Power Company (MPCo), has received cost-shared financing for the Project from the Department of Energy (DOE) under the Clean Coal Power Initiative. DOE conducted its NEPA review by preparing an Environmental Impact Statement (EIS) in cooperation with the U.S. Army Corps of Engineers (USACE), which resulted in the issuance of a Record of Decision (ROD) announcing the agency's decision to finance the Project in March 2010. MPCo received Air and Water Pollution Control permits from the state of Mississippi in March of 2010, and the Mississippi Public Service Commission issued a Certificate of Public Convenience and Necessity in May 2010.[1] DOE's Mitigation Action Plan (MAP) was issued in September 2010 and construction began in December of that year.

SMEPA Involvement and Request for Financing

SMEPA is a consumer-owned, not-for-profit rural electric generation and transmission cooperative that provides wholesale electric service to its eleven (11) member distribution cooperatives in 56 counties of Mississippi. SMEPA's mission is to provide affordable and reliable power to its members. MPCo, a private utility that sells power to SMEPA to serve approximately a third of SMEPA members' power demands, approached SMEPA in 2009 with the opportunity to participate in the Project. Based on its need to diversify generation resources in the region, SMEPA elected to support the Project and executed a Letter of Intent to evaluate potential joint ownership. SMEPA has evaluated their participation in the Project based on forecasted power demand, an evaluation of alternatives, and consideration of the Project's overall economic feasibility. In 2010, SMEPA prepared a Generation Construction Work Plan (GCWP), which evaluated SMEPA's construction needs to meet their projected power demand based on feasibility, environmental acceptability, and affordability. The GCWP reviewed previous Power Requirements Studies (PRS) and a long-range Power Supply Option Study (PSOS), which evaluated SMEPA's existing generation resources and the projected demand growth, and established that SMEPA would be capacity deficient by 2015. SMEPA subsequently released a Request for Power Supply Proposal to identify potential resources to meet this demand. Taking into account demand growth, carbon emissions, construction costs, and gas price forecasts, the submissions were analyzed in comparison to self-build options (SMEPA-constructed generation facilities) and participation in the Project. SMEPA also accounted for potential financial implications of their participation in the Project for their members. Given that the Project will proceed regardless of SMEPA's participation, SMEPA's membership will be affected by Project-associated rate increases associated with the construction and operation of the Project due to preexisting and immutable contractual agreements with

[1] The Certificate of Public Convenience and Necessity has since been appealed, reversed by the Mississippi Supreme Court and remanded to the Mississippi PSC for further proceedings in March of 2012. The Certificate was reissued by the Mississippi PSC on April 24, 2012.

MPCo. SMEPA determined that partial ownership in the Project would help minimize the unavoidable rate increase. Based on these evaluations, SMEPA determined that a 17.5% undivided ownership interest in the Project would be the best overall option and has formally requested financial assistance from RUS to finance this action. SMEPA's partial ownership would include the IGCC facility, the CO_2 pipeline, the reclaimed water supply line, the surface lignite mine, and electrical transmission facilities.

RUS Action

RUS conducts the rural electrification loan program, which provides financing through direct loans and loan guarantees for the construction and operation of generation facilities and electric transmission and distribution lines and systems to improve electric service for rural Americans. RUS bases its decisions on financial, engineering, and environmental considerations. RUS assessed whether SMEPA would have sufficient control and responsibility to alter the development of the Project in order to determine if the project is subject to NEPA, in accordance with 7 CFR 1794.20. Through discussions with SMEPA, and review of loan and contractual documentation, RUS established that the project will be completed regardless of RUS-funded SMEPA participation. RUS further established that the Joint Ownership and Operating Agreement (JOOA), to be executed with MPCo, will provide SMEPA with only a limited ability to influence the Project.[2] However, due to the Project's significant public interest and potential federal expenditure, RUS decided to consider the Project a federal action subject to NEPA and an undertaking as defined by Section 106 of the NHPA.

RUS reviewed transmission system impact studies and additional engineering studies provided by SMEPA, and the Final EIS (FEIS) and the associated MAP prepared by the DOE in cooperation with the USACE. RUS determined that SMEPA's participation would not require any additional infrastructure, and therefore would not cause any environmental impacts beyond what was identified and discussed in the FEIS. RUS reviewed and determined that the FEIS and MAP adequately assessed the potential impacts of the Project, and intends to adopt the EIS in accordance with 40 CFR 1506.3 and 7 CFR 1794.72. RUS/SMEPA participation will not cause any additional impacts on historic properties. RUS has therefore determined that the Project qualifies as an undertaking with no potential to effect historic properties in accordance with 36 CFR 800.3(a)(1).

This notice documents the Agency's intent to adopt the DOE/USACE FEIS, and fulfills the agency's responsibilities for public involvement, in accordance with 36 CFR 800.2(d)(2).

Nivin Elgohary,

Assistant Administrator, Electric Programs, Rural Utilities Service.

[FR Doc. 2012–15035 Filed 6–19–12; 8:45 am]

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[2] Through the JOOA, SMEPA would only be granted audit rights and authority for on-site representation during Project construction and operation. Should a Project Management Committee (PMC) be formed, SMEPA's representation would be proportional to their percentage of ownership, and therefore limited to 17.5% influence over construction and management decisions.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–45–2012]

Foreign-Trade Zone 7—Mayaguez, PR; Notification of Proposed Production Activity; Baxter Healthcare of Puerto Rico; (Pharmaceutical and Nutritional Intravenous Bags and Administration Sets); Aibonito and Jayuya, PR

The Puerto Rico Industrial Development Company, grantee of FTZ 7, submitted a notification of proposed production activity on behalf of Baxter Healthcare of Puerto Rico (Baxter), at two sites within FTZ 7, located in Aibonito and Jayuya, Puerto Rico. The facilities are used for the manufacture of pharmaceutical and nutritional intravenous (I.V.) bags, I.V. administration sets and their components.

Production under FTZ procedures could exempt Baxter from customs duty payments on the foreign status components used in export production. On its domestic sales, Baxter would be able to choose the duty rates during customs entry procedures that apply to the filled I.V. products and administration sets) (duty-free) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

Components and materials sourced from abroad include: Foil pouches, ABS resin, L-tryptophan, glutamic acid, N-Acetyl-L-Tyrosine and L-Lysine-Acetate (duty rate range: 3%–6.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 30, 2012.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2012–15088 Filed 6–19–12; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–44–2012]

Foreign-Trade Zone 61—San Juan, PR; Notification of Proposed Production Activity; Pfizer Pharmaceuticals LLC (Subzone 61A); (Ibuprofen Pharmaceutical Products); Guayama, PR

The Puerto Rico Trade and Export Company, grantee of FTZ 61, submitted a notification of proposed production activity on behalf of Pfizer Pharmaceuticals LLC (Pfizer) (Subzone 61A) for its manufacturing facility located in Guayama, Puerto Rico. The notification conforming to the requirements of the regulations of the Board (15 CFR 400.22) was received on June 13, 2012.

Subzone 61A was originally approved by the Board in 1992 at the former Searle plant located at Munoz Marin Avenue and Road 189 in Caguas, Puerto Rico, for the production and distribution of various pharmaceutical products under zone procedures (Board Order 617, 12/11/1992, 57 FR 61046, 12/23/1992). On June 8, 2012, a minor boundary modification under 15 CFR 400.38 of the Board's regulations was approved to relocate the subzone from Pfizer's Caguas plant to its facility located at PR 2, Km 141.3 in Guayama, Puerto Rico (S–69–2012).

Pfizer is now requesting to produce ibuprofen pharmaceutical products in bulk mixture or dosage form under FTZ procedures at the Guayama site. Production under FTZ procedures could exempt Pfizer from customs duty payments on the foreign status components used in export production.

On its domestic sales, Pfizer would be able to choose the duty rate during customs entry procedures that applies to the ibuprofen pharmaceutical products (duty-free) for foreign-status ibuprofen active ingredient (duty rate, 6.5%). Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 30, 2012.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2012–15093 Filed 6–19–12; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Mandatory Shrimp Vessel and Gear Characterization Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before August 20, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Anik Clemens, (727) 551–5611 or *Anik.Clemens@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a current information collection.

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes the Gulf of Mexico Fishery Management Council (Council) to prepare and amend fishery management plans for any fishery in waters under its jurisdiction. National Marine Fisheries Service (NMFS) manages the shrimp fishery in the waters of the Gulf of Mexico under the Shrimp Fishery Management Plan (FMP). The regulations for the Gulf Shrimp Vessel and Gear Characterization Form may be found at 50 CFR 622.5(a)(1)(iii)(C).

Owners or operators of vessels applying for or renewing a commercial vessel moratorium permit for Gulf shrimp must complete an annual Gulf Shrimp Vessel and Gear Characterization Form. The form will be provided by NMFS at the time of permit application and renewal. Compliance with this reporting requirement is required for permit issuance and renewal.

Through this form, NMFS is collecting census-level information on fishing vessel and gear characteristics in the Gulf of Mexico Exclusive Economic Zone (EEZ) shrimp fishery to conduct analyses that will improve fishery management decision-making in this fishery; ensure that national goals, objectives, and requirements of the Magnuson-Stevens Act, National Environmental Policy Act (NEPA), Regulatory Flexibility Act (RFA), Endangered Species Act (ESA), and Executive Order (E.O.) 12866 are met; and quantify achievement of the performance measures in the NMFS' Operating Plans. This information is vital in assessing the economic, social, and environmental effects of fishery management decisions and regulations on individual shrimp fishing enterprises, fishing communities, and the nation as a whole.

The burden estimates for this information collection have changed due to adjustments. Currently, there are approximately 1,563 permitted vessels in the Gulf shrimp fishery—fewer vessels than in the previous renewal.

II. Method of Collection

Respondents are mailed hard copies of the form. The forms must be completed and mailed back to NMFS before their permits expire.

III. Data

OMB Control Number: 0648–0542.

Form Number: None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,563.

Estimated Time per Response: Reports, 20 minutes.

Estimated Total Annual Burden Hours: 521.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information;

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 14, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–14987 Filed 6–19–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability of a Draft Programmatic Environmental Assessment for Office of Coast Survey Hydrographic Survey Projects

AGENCY: Office of Coast Survey (OCS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of availability of a Draft Programmatic Environmental Assessment; Request for comments.

SUMMARY: NOAA's Office of Coast Survey (OCS) seeks comment on a draft programmatic environmental assessment (PEA) of the hydrographic surveys and related activities that OCS regularly conducts in navigationally significant waters around the nation. These surveys use a vessel equipped with high-frequency side scan sonar, single beam, and multibeam echosounders, which use sound waves to find and identify objects in the water and to determine water depth. Hydrographic survey projects support the OCS mission to provide reliable nautical charts and other products necessary for safe navigation and sound decision-making in U.S. ocean and coastal waters. The intended effects of the surveys are to provide the foundation for navigational charts required by all domestic ships moving people and products in and out of U.S. ports every year. Charts help prevent mariners from running ships aground or hitting dangerous obstructions (e.g., ship wrecks, marine debris, or pinnacle rocks). Groundings or collisions with other objects in the sea can result in the release of oil or dangerous chemicals into the marine environment.

Date and Time: The above document is available for public review and comment through July 22, 2012.

ADDRESSES: If you wish to comment on the OCS Draft Programmatic Environmental Assessment, you may email comments to Jeff Ferguson, Chief, Hydrographic Surveys Division at *jeff.ferguson@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Jamison, Office of Coast Survey at 301–713–2777 x153 or *kathleen.jamison@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Draft Programmatic Environmental Assessment for Office of Coast Survey Hydrographic Survey Projects is available for review at *http://www.nauticalcharts.noaa.gov/Legal/*.

Authority: Coast and Geodetic Survey Act (33 U.S.C. 883a *et seq.*); Hydrographic Services Improvement Act, as amended (33 U.S.C. 892).

Dated: June 8, 2012.

Kathryn Ries,

Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2012–14998 Filed 6–19–12; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA626

Marine Mammals; File No. 16160

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application for permit amendment.

SUMMARY: Notice is hereby given that The Whale Museum (Responsible Party: Jenny Atkinson; Principal Investigator: Eric Eisenhardt), PO Box 945, Friday Harbor, WA 98250, has applied for an amendment to Scientific Research Permit No. 16160.

DATES: Written, telefaxed, or email comments must be received on or before July 20, 2012.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 16160 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Joselyd Garcia-Reyes or Kristy Beard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 16160 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA, 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 16160, issued on June 5, 2012 (77 FR 35657), authorizes takes of eight species of cetaceans in the inland waters of Washington State for scientific research. Two of the eight species targeted for research are listed as threatened or endangered: Killer whales (*Orcinus orca*) from the Southern Resident stock and humpback whales (*Megaptera novaeangliae*). Other species targeted for research are: Pacific white-sided dolphins (*Lagenorhynchus obliquidens*), Dall's porpoises (*Phocoenoides dalli*), harbor porpoises (*Phocoena phocoena*), eastern gray whales (*Eschrichtius robustus*), minke whales (*B. acutorostrata*), and killer whales. The research involves harassment by vessel approach for photo-identification, behavioral observation, and monitoring. The permit expires June 6, 2017.

The permit holder is requesting the permit be amended to increase Southern Resident killer whale takes from 50 to 200 per year based on recommendations provided during the ESA Section 7 consultation.

An environmental assessment (EA) and Finding of No Significant Impact (FONSI) (signed June 4, 2012) prepared for the permit has analyzed the requested 200 Southern Resident killer whale annual takes. NMFS determined that 200 Southern Resident killer whale takes would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required. The EA and FONSI are available upon request. A Biological Opinion was also prepared for the permit, which analyzed 200 Southern Resident killer whale takes (signed June 4, 2012) and concluded that the research would not jeopardize threatened and endangered species or destroy or adversely modify critical habitat. However, the permit authorizes 50 annual takes of Southern Resident killer whales pending public opportunity to comment on the higher take number.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the amendment request to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: June 14, 2012.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–15104 Filed 6–19–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB16

Marine Mammals; File No. 814–1899

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that the North Slope Borough Department of Wildlife Management, P.O. Box 69, Barrow, AK 99723 [Taqulik Hepa, Responsible Party; Dr. John C. George, Principal Investigator], has been issued a minor amendment to Scientific Research Permit No. 814–1899.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249.

FOR FURTHER INFORMATION CONTACT: Laura Morse or Amy Sloan, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The original permit (No. 814–1899), issued on July 18, 2007 (72 FR 40285), authorized the collection and receipt of parts from subsistence caught bearded seal (*Erignathus barbatus*), ringed seal (*Phoca hispida*), spotted seal (*Phoca larga*), ribbon seal (*Phoca fasciata*), bowhead whale (*Balaena mysticetus*), beluga whale (*Delphinapterus leucas*), minke whale (*Balaenoptera acutorostrata*), and grey whale (*Eschrichtius robustus*) in Alaska for the purposes of health related analyses through July 1, 2012. The minor amendment (No. 814–1899–04) extends the duration of the permit through July 1, 2013. No other terms or conditions of the permit changed as a result of this amendment.

Dated: June 14, 2012.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–15103 Filed 6–19–12; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Extension of Approval of Information Collection; Comment Request—Baby Bouncers and Walker-Jumpers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (Commission) requests comments on a proposed extension of approval, for a period of 3 years from the date of approval by the Office of Management and Budget (OMB), of information collection requirements for manufacturers and importers of children's articles known as baby-bouncers and walker-jumpers. The collection of information consists of requirements that manufacturers and importers of these products must make, keep and maintain records of inspections, testing, sales, and distributions consistent with the provisions of the Federal Hazardous Substances Act, 15 U.S.C. 1261, 1262, and 16 CFR part 1500.

The CPSC will consider all comments received in response to this notice before requesting approval of this collection of information from OMB.

DATES: The Office of the Secretary must receive written comments not later than August 20, 2012.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2012–0034, by any of the following methods:

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (email), except through *www.regulations.gov*.

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov*. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information, call or write Mary James, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone: (301) 504–7213 or by email to: *mjames@cpsc.gov.*

SUPPLEMENTARY INFORMATION: Regulations issued under provisions of the Federal Hazardous Substances Act (15 U.S.C. 1261, 1262), codified at 16 CFR part 1500, establish safety requirements for products called ''baby-bouncers'' and ''walker-jumpers.''

A. Requirements for Baby-Bouncers and Walker-Jumpers

One CPSC regulation bans any product known as a baby-bouncer, walker-jumper, or similar article if it is designed in such a way that exposed parts present hazards of amputations, crushing, lacerations, fractures, hematomas, bruises, or other injuries to children's fingers, toes, or other parts of the body. 16 CFR 1500.18(a)(6). This regulation previously included baby walkers as well, but these products are now covered by a separate regulation. 16 CFR part 1216.

A second CPSC regulation establishes criteria for exempting baby-bouncers and walker-jumpers from the banning rule under specified conditions. 16 CFR 1500.86(a)(4). The exemption regulation

requires certain labeling on these products and their packaging to identify the name and address of the manufacturer or distributor and the model number of the product. Additionally, the exemption regulation requires that records be established and maintained for 3 years that relate to testing, inspection, sales, and distributions of these products. The regulation does not specify a particular form or format for the records. Manufacturers and importers may rely on records kept in the ordinary course of business to satisfy the recordkeeping requirements, if those records contain the required information.

If a manufacturer or importer distributes products that violate the banning rule, the records required by section 1500.86(a)(4) can be used by the manufacturer or importer and the CPSC: (i) To identify specific models of products that fail to comply with applicable requirements, and (ii) to notify distributors and retailers if the products are subject to recall.

The OMB approved the collection of information requirements in the regulations under control number 3041–0019. OMB's most recent extension of approval expires on August 31, 2012. The CPSC now proposes to request an extension of approval, without change, for the collection of information requirements.

B. Estimated Burden

CPSC staff estimates that about 25 firms are subject to the testing and recordkeeping requirements of the regulations. Firms are expected to test on the average two new models per year per firm. CPSC staff estimates further that the burden imposed by the regulations on each of these firms is approximately 1 hour per year on the recordkeeping requirements and 30 minutes or less per model on the label requirements. Thus, the annual burden imposed by the regulations on all manufacturers and importers is approximately 50 hours on recordkeeping (25 firms × 2 hours) and 25 hours on labeling (25 firms × 1 hour) for a total annual burden of 75 hours per year.

CPSC staff estimates that the hourly wage for the time required to perform the required testing and recordkeeping is approximately $61.24 (Bureau of Labor Statistics: Total compensation rates for management, professional, and related occupations in private goods-producing industries, December, 2011) and that the hourly wage for the time required to maintain the required records is about $27.33 (Bureau of Labor Statistics: Total compensation rates for sales and office workers in private goods-producing industries, December 2011). The annualized total cost to the industry is estimated to be $3,745.

The Commission will expend approximately 2 days of professional staff time reviewing records required to be maintained by the regulations for baby-bouncers, and walker-jumpers. The annual cost to the federal government of the collection of information in these regulations is estimated to be about $165. This is based on an average hourly wage rate of $57.13 (the equivalent of a GS–14 Step 5 employee) with an additional 30.2 percent added for benefits (BLS, Percentage of total compensation comprised by benefits for all civilian management, professional, and related employees, December 2011), or $82.56 × 2 hours.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic, or other technological collection techniques, or other forms of information technology.

Dated: June 14, 2012.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2012–14950 Filed 6–19–12; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 77, No. 115, Thursday June 14, 2012, page 35660.

ANNOUNCED TIME AND DATE OF OPEN MEETING: 10 a.m.–12 p.m., Wednesday June 20, 2012.

CHANGES TO OPEN MEETING: Time Change to 9 a.m.–12 p.m., June 20, 2012.

MATTERS TO BE CONSIDERED: *Hearing:* Agenda and Priorities for Fiscal Year 2014.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: June 15, 2012.

Todd A. Stevenson,

Secretary.

[FR Doc. 2012–15146 Filed 6–18–12; 11:15 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2012–OS–0070]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel and Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 20, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Interoperability Services Layer, Attn: Ron Chen, 400 Gigling Road, Seaside, CA 93955.

Title; Associated Form; and OMB Number: Interoperability Services Layer; OMB Control Number 0704–TBD.

Needs and Uses: IoLS will be created as an enterprise level application supporting physical access control systems. IoLS will be a single application with multiple interfaces for different functionalities. A registration inquiry interface will accept a person identifier consisting of last name, first name, birthday, sex code, identifier type code and identifier number, search the ''Local Population'', a federated authoritative data source, and return data necessary to register a subject in a PACS.

A Registry Data Service will provide credential verification, registry data and any prior security alerts that have been obtained from the CIME. In addition it provides the capability to add or update local facility access persons, otherwise known as ''Locals'' within the DoD, to a central data source so they too can be included in the update service.

An Update Data Service will provide updates to information affecting registry like credential revocations and security alerts.

Affected Public: Business or other for profit (non-Military or Federal Employee).

Annual Burden Hours: 25,688.

Number of Respondents: 308,258.

Responses per Respondent: 1.

Average Burden per Response: 5 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

IoLS (Interoperability Layer Services) is an application in a set DMDC enterprise services specifically targeted to enhance DoD capability to support rapid electronic authentication for local/non-DoD population persons (i.e., vendors, contractors, laborers) requesting access to DoD Installations. IoLS is designed to enable disparate Physical Access Control Systems (PACS) within DoD to share identity and security related information. IoLS requires personal data collection to facilitate the initiation, investigation and adjudication of person security status by communicating with Continuous Information Management Engine *(CIME)* on Security Alert relevant to DoD security clearances and employment suitability determinations.

Dated: May 10, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–15006 Filed 6–19–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2012–OS–0072]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Office of the Secretary of Defense is deleting a systems of record notice from its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on July 20, 2012 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Cindy Allard, Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155, or by telephone at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: June 15, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion:

DFMP 07

DOD OVERSEAS EMPLOYMENT PROGRAM (FEBRUARY 22, 1993, 58 FR 10227).

Reason: Based on a recent review of DFMP 07, DoD Overseas Employment Program, it has been determined the program ended December 1, 1996, and all records associated with this program were destroyed in accordance with the NARA approved retention and disposal schedule; therefore this system can now be deleted.

[FR Doc. 2012–15041 Filed 6–19–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2012–OS–0071]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective on July 20, 2012 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive,

East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed system report, as required by U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on June 11 2012, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: June 15, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DHRA 06 DoD

SYSTEM NAME:

Defense Sexual Assault Incident Database (December 15, 2009, 74 FR 66298).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Primary location: Washington Headquarters Services, Enterprise Information Technology Support Directorate, WHS-Supported Organizations Division, 2521 South Clark Street, Suite 640, Arlington, VA 22209–2328.

SECONDARY LOCATIONS:

The Department of the Army, Sexual Assault Data Management System, Army G–1, DAPE–HR–HF, Room 300 Army Pentagon, Washington, DC 20310–0300.

The Department of the Navy, Consolidated Law Enforcement Operations Center, Naval Criminal Investigative Service, 716 Sicard Street SE., Washington Navy Yard, DC 20388–5380.

The Department of the Air Force, Investigative Information Management System, Headquarters United States Air Force, Air Force Office of Special Investigations, Russell Knox Building, 27130 Telegraph Road, Quantico, VA 22134–2253.

Decentralized locations include the Services staff and field operating agencies, major commands, installations, and activities. Official mailing addresses are published as an appendix to each Services compilation of systems of records notices.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Active duty Army, Navy, Marine Corps and Air Force members; active duty Reserve members; and National Guard members covered by title 10 or title 32 (hereafter ''service members''); service members who were victims of a sexual assault prior to enlistment or commissioning; military dependents age 18 and older; DoD Civilians; DoD Contractors; other government civilians; U.S. Civilians; and foreign military members who may be lawfully admitted into the United States or foreign military members who are not covered under the Privacy Act who may be victims and/or alleged perpetrators in a sexual assault involving a member of the Armed Forces.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Victim information includes last, first, and middle name, victim case number (i.e., system generated unique control number), identification type (i.e., DoD ID number, Social Security Number (SSN), passport, U.S. Permanent Residence Card, or foreign identification), identification number for identification provided, birth date, age at the time of incident, gender, race, ethnicity, and victim type (i.e., military, DoD civilian/contractor).

Alleged perpetrator information includes last, first, and middle name, identification type (i.e., DoD ID number, Social Security Number (SSN), passport, U.S. Permanent Residence Card, or foreign identification), identification number for identification provided, birth date, age at the time of incident, gender, race, ethnicity, and alleged perpetrator category (i.e., military, DoD civilian/contractor).

However, if a victim of a sexual assault involving a member of the Armed Forces makes a Restricted Report of sexual assault, no personal identifying information for the victim and/or alleged perpetrator is collected.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 113 note, Department of Defense Policy and Procedures on Prevention and Response to Sexual Assaults Involving Members of the Armed Forces; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 32 U.S.C., National Guard; DoD Directive 6495.01, Sexual Assault Prevention and Response (SAPR) Program; DoD Instruction 6495.02, Sexual Assault Prevention and Response (SAPR) Program Procedures; 10 U.S.C. 3013, Secretary of the Army; Army Regulation 600–20, Chapter 8, Army Command Policy (Sexual Assault Prevention and Response (SAPR) Program); 10 U.S.C. 5013, Secretary of the Navy; Secretary of the Navy Instruction 1752.4A, Sexual Assault Prevention and Response; Marine Corps Order 1752.5A, Sexual Assault Prevention and Response (SAPR) Program; 10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 36–6001, Sexual Assault Prevention and Response (SAPR) Program; and E.O. 9397 (SSN), as amended.''

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Any release of information contained in this system of records outside the DoD will be compatible with the purpose(s) for which the information is collected and maintained. The DoD 'Blanket Routine Uses' set forth at the beginning of Office of the Secretary of Defense (OSD) systems of records notices apply to this system.''

* * * * *

RETRIEVABILITY:

Delete entry and replace with ''Victim records are retrieved by first name, last name, identification number and type of identification provided, and Defense

Sexual Assault Incident Database control number assigned to the incident.

Alleged perpetrator records are retrieved by first name, last name, and identification number and type of identification provided.''

SAFEGUARDS:

Delete entry and replace with ''Records are maintained in a controlled facility. Physical entry is restricted by the use of alarms, cipher and locks and armed guards. Access to case files in the system is role-based and requires the use of a Common Access Card and password. Further, at the DoD-level, only de-identified data can be accessed.

These are For Official Use Only records and are maintained in controlled facilities that employ physical restrictions and safeguards such as security guards, identification badges, key cards, and locks.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Records are cut off two years after inactivity and destroyed sixty years after cut off.''

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the appropriate Service office listed below:

The Department of the Army, Human Resources Policy Directorate (HRPD), Sexual Harassment/Assault Response and Prevention (SHARP), 1225 South Clark Street, Arlington, VA 22202–4371.

The Department of the Navy, ATTN: Sexual Assault Prevention and Response Program Manager, 716 Sicard Street SE., Suite 1000, Washington Navy Yard, DC 20374–5140.

Headquarters United States Air Force/A1S, ATTN: Sexual Assault Prevention and Response Program Manager, 1040 Air Force Pentagon, Washington, DC 20330–1040.

The National Guard Bureau, Sexual Assault Prevention and Response Office, ATTN: Sexual Assault Prevention and Response Program Manager, 111 South George Mason Drive, AH2, Arlington, VA 22204–1373.

Requests must be signed and include the name, identification number and type of identification, and indicate whether the individual is a victim or alleged perpetrator.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the following as appropriate:

The Department of the Army, HRPD, Sexual Harassment/Assault Response and Prevention (SHARP), 1225 South Clark Street, Arlington, VA 22202–4371.

The Department of the Navy, ATTN: Sexual Assault Prevention and Response Program Manager, 716 Sicard Street SE., Suite 1000, Washington Navy Yard, DC 20374–5140.

Headquarters United States Air Force/A1S, ATTN: Sexual Assault Prevention and Response Program Manager, 1040 Air Force Pentagon, Washington, DC 20330–1040.

The National Guard Bureau, Sexual Assault Prevention and Response Office, ATTN: Sexual Assault Prevention and Response Program Manager, 111 South George Mason Drive, AH2, Arlington, VA 22204–1373.

Requests must be signed and include the name, identification number and type of identification, indicate whether the individual is a victim or alleged perpetrator, and the number of this system of records notice.''

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''The individual, Sexual Assault Response Coordinators, Service Military Criminal Investigative Organizations, and Military Service sexual assault case management systems.''

* * * * *

[FR Doc. 2012–15042 Filed 6–19–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2012–OS–0059]

Privacy Act of 1974; System of Records

AGENCY: National Geospatial-Intelligence Agency, DoD.

ACTION: Notice to add a new system of records.

SUMMARY: The National Geospatial-Intelligence Agency is establishing a new system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The blanket (k)(1) exemption applies to this systems of records to accurately describe the basis for exempting disclosure of classified information that is or may be contained in the records.

DATES: This proposed action will be effective on July 20, 2012 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: National Geospatial-Intelligence Agency (NGA), ATTN: Security Specialist, Mission Support, MSRS P–12, 7500 GEOINT Drive, Springfield, VA 22150.

SUPPLEMENTARY INFORMATION: The National Geospatial-Intelligence Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 24, 2012, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: June 15, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NGA–005

SYSTEM NAME:

National Geospatial-Intelligence Agency Maritime Safety Office Metrics Database.

SYSTEM LOCATION:

Records are maintained at National Geospatial-Intelligence Agency (NGA) Headquarters in Washington, DC metro area facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are limited to government employees in the NGA Source Operations Directorate, Maritime Safety Office.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, employee ID number, employee type, employee pay band level, department, supervisor, email address. In addition, time worked on each production and non-production task is also included in the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

The Maritime Safety Office collects, uses, maintains, and disseminates information to account for employees' daily time spent on each activity to provide performance measurements to senior leadership. Data in the Maritime Metrics Database is necessary for NGA leadership to effectively and efficiently make decisions on fiscal and resource planning.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may be specifically disclosed outside of the DoD as a routine pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' set forth at the beginning of NGA's compilation or systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Records may be retrieved by name or employee ID number.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable NGA automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

NGA will maintain the metrics in electronic form for a year before being deleted or destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Maritime Safety Office (SH), Source Operations Directorate (S), National Geospatial-Intelligence Agency, 7500 GEOINT Drive, Springfield, VA 22150.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the National Geospatial-Intelligence Agency (NGA), Freedom of Information Act/Privacy Act Office, 7500 GEOINT Drive, Springfield, VA 22150.

The request envelope and letter should both be clearly marked ''Privacy Act Inquiry.''

The written request must contain your full name, current address, and date and place of birth. Also include an explanation of why you believe NGA would have information on you and specify when you believe the records would have been created.

You must sign your request and your signature must either be notarized or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

IF EXECUTED OUTSIDE THE UNITED STATES:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

IF EXECUTED WITHIN THE UNITED STATES, ITS TERRITORIES, POSSESSIONS, OR COMMONWEALTHS:

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking access to this system of records contains information about themselves should address written inquiries to the National Geospatial-Intelligence Agency (NGA), Freedom of Information Act/Privacy Act Office, 7500 GEOINT Drive, Springfield, VA 22150.

The request envelope and letter should both be clearly marked ''Privacy Act Inquiry.''

The written request must contain your full name, current address, and date and place of birth. Also include an explanation of why you believe NGA would have information on you and specify when you believe the records would have been created.

You must sign your request and your signature must either be notarized or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

IF EXECUTED OUTSIDE THE UNITED STATES:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

IF EXECUTED WITHIN THE UNITED STATES, ITS TERRITORIES, POSSESSIONS, OR COMMONWEALTHS:

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORDS PROCEDURE:

Individuals contesting the accuracy of records in this system of records contains information about themselves should address written inquiries to the National Geospatial-Intelligence Agency (NGA), Freedom of Information Act/Privacy Act Office, 7500 GEOINT Drive, Springfield, VA 22150.

The request envelope and letter should both be clearly marked ''Privacy Act Inquiry.''

The written request must contain your full name, current address, and date and place of birth. Also include an explanation of why you believe NGA would have information on you and specify when you believe the records would have been created.

You must sign your request and your signature must either be notarized or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

IF EXECUTED OUTSIDE THE UNITED STATES:

'I declare (or certify, verify, or state).under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

IF EXECUTED WITHIN THE UNITED STATES, ITS TERRITORIES, POSSESSIONS, OR COMMONWEALTHS:

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD SOURCE CATEGORIES:

Information originates from the individual and from sources contacted during personnel and background investigations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

An exemption rule for this system has been promulgated in accordance with

requirements of 5 U.S.C. 553(b)(1), (2), and (3), and published in 32 CFR part 320. For additional information contact the system manager.

[FR Doc. 2012–15043 Filed 6–19–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2012–OS–0073]

Privacy Act of 1974; System of Records

AGENCY: U.S. Strategic Command (USSTRATCOM), DoD.

ACTION: Notice to add a system of records.

SUMMARY: The U.S. Strategic Command proposes to add a new system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The blanket (k)(1) exemption applies to this systems of records to accurately describe the basis for exempting disclosure of classified information that is or may be contained in the records.

DATES: This proposed action will be effective on July 20, 2012 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Mike L. Vance, U.S. Strategic Command (USSTRATCOM) J663, 901 SAC Boulevard, Suite 3J11, Offutt Air Force Base, NE 68113–6020; telephone 402–232–5527.

SUPPLEMENTARY INFORMATION: The U.S. Strategic Command notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on June 11, 2012, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records about Individuals'', dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: June 15, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

FSTRATCOM 02

SYSTEM NAME:

Joint Satellite Communications (SATCOM) Management Enterprise (JSME).

SYSTEM LOCATION:

Primary servers: Global SATCOM Support Center (GSSC), Building 1471, Room 210, Peterson Air Force Base, CO 80914–4500. Back-up servers: U.S. Strategic Command (USSTRATCOM), Building 500, Suite BB30, 901 SAC Boulevard, Offutt Air Force Base, NE 68113–6020.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty, Reserve, and National Guard military members; Government civilians; and contractors with a requirement for system access in order to perform their SATCOM operations and management duties.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, rank/title, work phone numbers, work email addresses, and organization.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Department of Defense (DoD) Instruction 8500.2, Information Assurance Implementation; Chairman of the Joint Chiefs of Staff Instruction 6250.01, Satellite Communications; USSTRATCOM Instruction (SI) 714–01, DoD Gateways (Standardized Tactical Entry Point/Teleport); SI 714–02, SATCOM System Expert (SSE) and Consolidated SSE Responsibilities; SI 714–03, SATCOM Support Center Management; SI 714–04, Consolidated SATCOM Management Policies and Procedures; and SI 714–05, SATCOM Electromagnetic Interference (EMI) Resolution Procedures.

PURPOSE(S):

JSME collects and maintains authorized users and points of contact for account management, internal housekeeping, access control, need-to-know determinations, and operational requirements for satellite communications.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a (b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a (b) (3) as follows:

The DoD 'Blanket Routine Uses' apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

By individual's name or organization.

SAFEGUARDS:

Access to the system is only available via the Secret Internet Protocol Router Network (SIPRNet), which requires a login and password for access. Access to PII also requires a system login and password, except to access PII for those individuals designated as customer support points of contact for their organizations. System servers are maintained within secured buildings in areas accessible only to persons having an official need to know and who are properly trained and screened.

RETENTION AND DISPOSAL:

Disposition pending (until the National Archives and Records Administration approves retention and disposal schedule, records will be treated as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Strategic Command J663, 901 SAC Boulevard, Suite 3J11, Offutt Air Force Base, NE 68113–6020.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the JSME Project Manager, U.S. Strategic Command J663, 901 SAC Boulevard, Suite 3J11, Offutt Air Force Base, NE 68113–6020.

For verification purposes, individuals should provide their full name, any details which may assist in locating

records, and their signature. In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

IF EXECUTED OUTSIDE THE UNITED STATES:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

IF EXECUTED WITHIN THE UNITED STATES, ITS TERRITORIES, POSSESSIONS, OR COMMONWEALTHS:

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the JSME Project Manager, U.S. Strategic Command J663, 901 SAC Boulevard, Suite 3J11, Offutt Air Force Base, NE 68113–6020.

For verification purposes, individuals should provide their full name, any details which may assist in locating records, and their signature. In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

IF EXECUTED OUTSIDE THE UNITED STATES:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

IF EXECUTED WITHIN THE UNITED STATES, ITS TERRITORIES, POSSESSIONS, OR COMMONWEALTHS:

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest information contained in this system should address written inquiries to the JSME Project Manager, U.S. Strategic Command J663, 901 SAC Boulevard, Suite 3J11, Offutt Air Force Base, NE 68113–6020.

RECORD SOURCE CATEGORIES:

From the individual and privileged system users.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), and published in 32 CFR part 806b. For additional information contact the system manager.

[FR Doc. 2012–15044 Filed 6–19–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards: National Institute on Disability and Rehabilitation Research; Disability and Rehabilitation Research Projects and Centers Program; Rehabilitation Engineering Research Centers (RERCs)

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information: National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—RERCs—Recreational Technologies and Exercise Physiology Benefiting Individuals With Disabilities and Rehabilitation Robotics; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2012

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133E–1 and 84.133E–3.

DATES:

Applications Available: June 20, 2012.

Date of Pre-Application Meeting: July 11, 2012.

Deadline for Transmittal of Applications: August 14, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technologies that maximize the full inclusion and integration of individuals with disabilities into society, and support the employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities; and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Rehabilitation Engineering Research Centers Program (RERCs)

The purpose of the RERCs, which are funded through the Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act by conducting advanced engineering research on and development of innovative technologies that are designed to solve particular rehabilitation problems, or to remove environmental barriers. RERCs also demonstrate and evaluate such technologies, facilitate service delivery system changes, stimulate the production and distribution of new technologies and equipment in the private sector, and provide training opportunities for early-career rehabilitation engineers. RERCs seek to solve rehabilitation problems and remove environmental barriers to improvements in employment, community living and participation, and health and function outcomes of individuals with disabilities.

Priority: These priorities are from the notice of final priorities for this program, published elsewhere in this issue of the **Federal Register**.

Absolute Priorities: For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet one of the following priorities.

These priorities are:

84.133E–1—Recreational Technologies and Exercise Physiology Benefiting Individuals with Disabilities.

84.133E–3—Rehabilitation Robotics.

Note: The full text of these priorities is included in the notice of final priorities published elsewhere in this issue of the **Federal Register** and in the application package for this competition.

Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 86, and 97. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 350. (d) The notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $1,900,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2013 from the list of unfunded applicants from this competition.

Maximum Award: We will reject any application that proposes a budget exceeding $950,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1 for the RERC on Recreational Technologies and Exercise Physiology Benefiting Individuals with Disabilities (CFDA No. 84.133E–1) and 1 for Rehabilitation Robotics (CFDA No. 84.133E–3).

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA numbers 84.133E–1 and 84.133E–3.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2.a. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit the application narrative (Part III) to the equivalent of no more than 100 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative section (Part III).

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

2.b. *Submission of Proprietary Information:*

Given the types of projects that may be proposed in applications for this competition, an application may include business information that an applicant considers proprietary. The Department's regulations define ''business information'' in 34 CFR 5.11.

The Department is planning to post on its Web site the narrative portion of the applications selected for funding under this competition. Upon receipt of award under this competition, applicants selected for funding must identify any business information contained in their application that they wish to be treated as confidential. Identifying confidential business information in the submitted application will help facilitate this public disclosure process.

2.c. Accessibility of Application Narratives. To ensure accessibility of application information posted on the Department's Web site, applicants selected for funding under this competition will be required to provide an electronic copy of the narrative portion of their application that is accessible to individuals with disabilities. Guidelines on preparing accessible documents in various formats are available at: *http://www2.ed.gov/internal/internalguidelines.html.*

3. *Submission Dates and Times:*

Applications Available: June 20, 2012.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held July 11, 2012. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or for an individual consultation, contact either Lynn Medley or Marlene Spencer as follows:

Lynn Medley, U.S. Department of Education, 400 Maryland Avenue SW., Room 5140, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7338 or by email: *Lynn.Medley@ed.gov.*

Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *Marlene.Spencer@ed.gov.*

Deadline for Transmittal of Applications: August 14, 2012.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact one of the individuals listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the *Recreational Technologies and Exercise Physiology Benefiting Individuals with Disabilities,* CFDA number 84.133E–1 and *Rehabilitation Robotics,* CFDA number 84.133E–3, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant applications for this competition at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133E).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not

receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, PCP, Washington, DC 20202–2700. FAX: (202) 245–7323.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133E–1 or 84.133E–3), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133E–1 or 84.133E–3), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 350.54 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The percentage of NIDRR-supported fellows, post-doctoral trainees, and doctoral students who publish results of NIDRR-sponsored research in refereed journals.
- The number of accomplishments (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.
- The number of new or improved NIDRR-funded assistive and universally designed technologies, products, and devices transferred to industry for potential commercialization.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *www.ed.gov/about/offices/list/opepd/sas/index.html.*

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Lynn Medley or Marlene Spencer as follows:

Lynn Medley, U.S. Department of Education, 400 Maryland Avenue SW., Room 5140, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7338 or by email: *Lynn.Medley@ed.gov.*

Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *Marlene.Spencer@ed.gov.*

If you use a TDD or a TTY call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY call FRS, toll-free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: June 15, 2012.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2012–15089 Filed 6–19–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards: Disability and Rehabilitation Research Projects and Centers Program; Disability and Rehabilitation Research Projects; Burn Model Systems Centers

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information: National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability and Rehabilitation Research Projects (DRRPs)—Burn Model Systems (BMS) Centers; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2012

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A–3.

DATES:

Applications Available: June 20, 2012.

Date of Pre-Application Meeting: July 11, 2012.

Deadline for Transmittal of Applications: August 9, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Disability and Rehabilitation Research Projects (DRRPs)

The purpose of DRRPs, which are under NIDRR's Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: research, training, demonstration, development, dissemination, utilization, and technical assistance. Additionally information on DRRPs can be found at: *www.ed.gov/rschstat/research/pubs/res-program.html.*

Priorities: NIDRR has established two absolute priorities for this competition.

Absolute Priorities: The *General DRRP Requirements* priority, which applies to all DRRP competitions, is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). The *Burn Model Systems Centers* priority is from the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

General Disability Rehabilitation Research Projects (DRRP) Requirements and *Burn Model Systems (BMS) Centers.*

Note: The full text of these priorities are included in the pertinent notice of final priority published in the **Federal Register** and in the application package for this competition.

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 86, and 97. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 350. (d) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). (e) The notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $1,500,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2013 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $361,000–$389,000.

Estimated Average Size of Awards: $375,000.

Maximum Award: We will reject any application that proposes a budget exceeding $389,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is required by 34 CFR 350.62(a) and will be negotiated at the time of the grant award.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.133A–3.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning

the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 100 pages, using the following standards:

A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative section (Part III).

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: June 20, 2012.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on July 11, 2012. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or for an individual consultation, contact either Lynn Medley or Marlene Spencer as follows:

Lynn Medley, U.S. Department of Education, 400 Maryland Avenue SW., Room 5140, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7338 or by email: *Lynn.Medley@ed.gov*.

Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *Marlene.Spencer@ed.gov*.

Deadline for Transmittal of Applications: August 20, 2012.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp*.

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the *Burn Model Systems (BMS) Centers* CFDA number 84.133A–3 must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions.

Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the *Burn Model Systems (BMS) Centers* Competition at www.Grants.gov. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov*.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format only. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.

- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue SW., Room 5140 PCP, Washington, DC 20202–2700, FAX: (202) 245–7323.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–3), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–3), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 350.54 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The number of products (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices developed or tested with NIDRR funding) that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *www.ed.gov/about/offices/list/opepd/sas/index.html.*

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved

application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Lynn Medley or Marlene Spencer as follows:

Lynn Medley, U.S. Department of Education, 400 Maryland Avenue SW., Room 5140, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7338 or by email: *Lynn.Medley@ed.gov.*

Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *Marlene.Spencer@ed.gov.*

If you use a TDD or a TTY call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY call the FRS, toll-free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature of this site, you can limit your search to documents published by the Department.

Dated: June 15, 2012.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2012–15101 Filed 6–19–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards: Upward Bound Math and Science Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information: Upward Bound Math and Science Program.

Notice inviting applications for new awards for fiscal year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.047M.

DATES:

Applications Available: June 20, 2012.

Deadline for Transmittal of Applications: July 20, 2012.

Deadline for Intergovernmental Review: September 18, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Upward Bound (UB) Program is one of the seven programs known as the Federal TRIO Programs, which provide postsecondary educational support for qualified individuals from disadvantaged backgrounds. The UB Program is a discretionary grant program that supports projects designed to provide the skills and motivation necessary to complete a program of secondary education and to enter and succeed in a program of postsecondary education. There are three types of grants under the UB Program: regular UB grants, Veterans UB grants, and UB Math and Science (UBMS) grants. This notice announces deadlines and other information only for UBMS grants.

The UBMS program supports projects designed to prepare high school students for postsecondary education programs that lead to careers in the fields of math and science.

The President has set a clear goal for our education system: by 2020, the United States will once again lead the world in postsecondary attainment. The Department views the UBMS Program as a critical component in the effort to improve the quality of student outcomes so that more students are well prepared for college and careers. To more strategically align UBMS with overarching reform strategies for postsecondary completion, the Department is announcing three competitive preference priorities for this competition.

Priorities: There are three competitive preference priorities: Competitive Preference Priority 1—Turning Around Persistently Lowest-Achieving Schools; Competitive Preference Priority 2—Enabling More Data-Based Decision-Making; and Competitive Preference Priority 3—Improving Productivity. The three priorities are from the Department's notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

For FY 2012 and any subsequent year in which the Department makes awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to an additional five points to an application that meets Competitive Preference Priority 1, up to an additional five points to an application that meets Competitive Preference Priority 2, and up to an additional five points to an application that meets Competitive Preference Priority 3, depending on how well the application meets these priorities. The maximum competitive preference points an application can receive under this competition is 10.

Note: Applicants must include in the one-page abstract submitted with the application a statement indicating which competitive preference priority or priorities they have addressed. The priority or priorities addressed in the application must also be listed on the UBMS Program Profile Sheet.

These priorities are:

Competitive Preference Priority 1—Turning Around Persistently Lowest-Achieving Schools (Up to 5 additional points).

Background:

The Department is using Competitive Preference Priority 1 because an essential element in strengthening our education system is dramatic improvement of student performance in each State's persistently lowest-achieving schools. Overwhelming evidence shows that students enrolled in persistently lowest-achieving schools are most likely not to persist from one grade to the next, not be ready for college when they graduate from high school, and not enroll in a program of postsecondary education. Due to the fact that many UBMS-eligible students are

enrolled in the nation's lowest-performing high schools, the Department believes UBMS has an important role to play in furthering the goals of improving academic performance and college access for students attending these schools.

Priority:

Projects that are designed to address the following priority area—

Providing services to students enrolled in persistently lowest-achieving schools (as defined in this notice).

Note: For the purposes of this priority, the Department considers schools that are identified as Tier I or Tier II schools under the School Improvement Grants Program (see 75 FR 66363) as part of a State's approved FY 2009 or FY 2010 applications to be persistently lowest-achieving schools. A list of these Tier I and Tier II schools can be found on the Department's Web site at *http://www2.ed.gov/programs/sif/index.html.*

Note: Applicants addressing this priority might want to consider focusing on a small number of target high schools that meet the definition of ''persistently lowest-achieving school'' and consider ensuring that no fewer than 40 percent of its recommended number of participants are students attending these persistently lowest-achieving schools. The Department is interested in seeing strong plans to improve student achievement and outcomes in these schools.

Competitive Preference Priority 2—Enabling More Data-Based Decision-Making (Up to 5 additional points).

Background:

The Department is using Competitive Preference Priority 2 because data help programs better serve the needs of participating students, which increases the odds that they will pursue and succeed in postsecondary education. For UBMS grantees, accurate and trustworthy data—particularly information from postsecondary education data systems about the outcomes of prior students the grantee has served—provide an important way to gauge effectiveness and guide decisions about resource allocation and improvements. Data from State or other reliable third-party sources are likely to be more timely and of higher quality than self-reported data from surveys or interviews.

Priority:

Projects that are designed to collect (or obtain), analyze, and use high-quality and timely data, including data on program participant outcomes, in accordance with privacy requirements (as defined in this notice), in the following priority areas:

(a) Improving postsecondary student outcomes relating to enrollment, persistence, and completion and leading to career success, and

(b) Providing reliable and comprehensive information on the implementation of Department of Education programs, and participant outcomes in these programs, by using data from State longitudinal data systems or by obtaining data from reliable third-party sources.

Note: Applicants addressing this priority might want to consider discussing how they plan to work with State longitudinal data systems or other high-quality third-party data systems that have the ability to track students from secondary through postsecondary education to obtain high-quality, timely, accurate, and reliable data on postsecondary enrollment, course taking, persistence, and completion. Applicants may also want to consider discussing how they would incorporate outcome data into their projects to increase transparency and improve decision-making on the part of students and families, especially with respect to preparing for, evaluating, and selecting a program of postsecondary education.

Competitive Preference Priority 3—Improving Productivity (Up to 5 additional points).

Background:

The Department is using Competitive Preference Priority 3 because it believes that it is more important than ever to support projects that are designed to significantly increase efficiency in the use of resources while improving student outcomes. A key performance measure for the UBMS Program is the efficiency measure—cost per successful outcome, where a successful outcome is defined by the percentage of students persisting in secondary school or enrolling in, persisting in, or graduating from postsecondary education. Applicants proposing projects designed to decrease their cost per participant while improving student outcomes will be more likely to perform well on this efficiency measure.

Priority:

Projects that are designed to significantly increase efficiency in the use of time, staff, money, or other resources while improving student learning or other educational outcomes (*i.e.,* outcome per unit of resource). Such projects may include innovative and sustainable uses of technology, modification of school schedules and teacher compensation systems, use of open educational resources (as defined in this notice), or other strategies.

Note: The types of projects identified above are suggestions for ways to improve productivity. The Department recognizes that some of these examples, such as modification of teacher compensation systems, may not be relevant to this notice. Other strategies for productivity could include the use of technology, alternative staffing models, or accelerated learning.

Note: Although not required, the Secretary encourages applicants addressing this priority to explain how they will serve the same or an increased number of students at a lower cost per participant. The Department is interested in seeing strong plans that propose to serve an increasing number of students at a lower cost per participant.

Definitions: These definitions are from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637), and they apply to the competitive preference priorities in this notice.

Open educational resources (OER) means teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use or repurposing by others.

Persistently lowest-achieving schools means, as determined by the State: (i) Any Title I school in improvement, corrective action, or restructuring that (a) is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or (b) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and (ii) any secondary school that is eligible for, but does not receive, Title I funds that: (a) Is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or (b) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years.

To identify the persistently lowest-achieving schools, a State must take into account both: (i) The academic achievement of the ''all students'' group in a school in terms of proficiency on the State's assessments under section 1111(b)(3) of the Elementary and Secondary Education Act in reading/language arts and mathematics combined; and (ii) the school's lack of progress on those assessments over a number of years in the ''all students'' group.

Privacy requirements means the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and its implementing regulations in 34 CFR part 99, the

Privacy Act, 5 U.S.C. 552a, as well as all applicable Federal, State, and local requirements regarding privacy.

Program Authority: 20 U.S.C. 1070a–11 and 20 U.S.C. 1070a–13.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for 75.215 through 75.221), 77, 79, 80, 82, 84, 86, 97, 98, and 99. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 645. (d) The notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $38,237,093.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2013 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $250,000 to $355,000.

Estimated Average Size of Awards: $258,749.

Maximum Award:

For new applicants or existing grantees proposing to serve a new target area or schools, the maximum award is equal to $250,000 to serve at least 60 students.

For an applicant currently receiving a UBMS Program grant and applying for a grant to serve the same target area or schools, the maximum award amount is determined based upon the applicant's proposed per participant cost, as follows:

- If an applicant's proposed per participant cost is at or below $4,200, then the applicant's maximum award is equal to the applicant's grant award amount for FY 2007, the first year of the previous grant cycle, plus 5 percent. If the applicant receives a new award from this competition, the grantee must serve a number of participants such that the per participant cost is $4,200 or less.
- If an applicant's proposed per participant cost is at or below $4,500 and above $4,200, then the applicant's maximum award is equal to the applicant's grant award amount for FY 2007, the first year of the previous grant cycle. If the applicant receives a new award from this competition, the grantee must serve a number of participants such that the per participant cost is $4,500 or less.
- If an applicant's proposed per participant cost is above $4,500, then the applicant's maximum award is equal to $250,000. If the applicant receives a new award from this competition, the grantee must serve at least 50 students.

Note: An applicant should ensure that its cost per participant will allow the grant to serve students well and produce quality outcomes in terms of high school graduation and postsecondary entry and completion. Applicants proposing to serve students at a lower cost per participant than that of their existing project should consider selecting a level at which they will be able to sustain or improve student outcomes.

Pursuant to 34 CFR 645.43(a), we will reject any application that proposes a budget exceeding the maximum award amounts described in this section for a single budget period of 12 months. Pursuant to 34 CFR 645.43(a), we will also reject any application that proposes a budget to serve fewer than 50 participants.

Estimated Number of Awards: 148.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education; public and private agencies and organizations, including community-based organizations with experience in serving disadvantaged youth; secondary schools; and combinations of these institutions, agencies, and organizations.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other:* An applicant may submit more than one application for a UBMS grant as long as each application describes a project that serves a different target area or target school or another designated different population (34 CFR 645.20(a)). The Secretary is not designating any additional populations for which an applicant may submit a separate application under this competition (34 CFR 645.20(b)).

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet by downloading the package from the program Web site at: *http://www2.ed.gov/programs/triomathsci/index.html*.

You can also request a copy of the application package from: Sharon Easterling, Upward Bound Math and Science Programs, U.S. Department of Education, 1990 K Street NW., Room 7000, Washington, DC 20006–8510. Telephone: (202) 502–7600 or by email: *TRIO@ed.gov*.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative (Part III) to no more than 60 pages. However, any application addressing the competitive preference priorities may include up to four additional pages for each priority addressed (a total of 12 pages if all three priorities are addressed) in a separate section of the application submission to discuss how the application meets the competitive preference priority or priorities. These additional pages cannot be used for or transferred to the project narrative. Partial pages will count as a full page toward the page limit. For purposes of determining compliance with the page limit, each page on which there are words will be counted as one full page. Applicants must use the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, except titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

The page limits do not apply to Part I, the Application for Federal Assistance

(SF 424); Part II, the budget information summary form (ED Form 524); the assurances and certifications; the UBMS Program Profile; or the one-page Project Abstract narrative. If you include any attachments or appendices, these items will be counted as part of Part III, the application narrative, for purposes of the page-limit requirement. You must include your complete response to the selection criteria, which also includes the budget narrative, in Part III, the application narrative.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: June 20, 2012.

Deadline for Transmittal of Applications: July 20, 2012.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 18, 2012.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We specify unallowable costs in 34 CFR 645.41. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Upward Bound Math and Science Grant Competition, CFDA number 84.047M, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for the Upward Bound Math and Science Grant competition at *www.Grants.gov*. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.047, not 84.047M).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News

and Events on the Department's G5 system home page at *www.G5.gov*.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a .PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable .PDF file. If you upload a file type other than a read-only, non-modifiable .PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues With the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because——

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Sharon Easterling, U.S. Department of Education, 1990 K St. NW., room 7000, Washington, DC 20006–8510. Fax: (202) 502–7857.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.047M,) LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.047M), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 645.31 and are listed in the application package.

Note: With the changes made to section 402A(f)(3)(B) of the Higher Education Act of 1965, as amended, by section 403 of the Higher Education Opportunity Act, the UBMS Program objectives have been standardized, and the Department has updated 34 CFR 645.31(b) accordingly. 75 FR 65712, 65786–65787 (October 26, 2010). Please note that applicants are required to use these objectives to measure performance under the program. Specifically, the ''Objectives'' section of the selection criterion is worth nine points, and applicants should address the standardized objectives related to: academic performance (GPA) (1 point), academic performance (standardized test scores) (1 point), secondary school retention and graduation (with regular secondary school diploma) (2 points), completion of a rigorous secondary school program of study (1 point), postsecondary enrollment (3 points), and postsecondary completion (1 point).

In addition, while developing the plan of operation and budget for an application, the applicant should select a cost per participant at which it will be able to serve students well and produce quality outcomes in terms of high school graduation and postsecondary entry and completion. If existing applicants are proposing to serve students at a lower cost per participant than in their existing project, they should select a level at which they will be able to sustain or improve student outcomes.

2. *Review and Selection Process:* A panel of non-Federal readers will review each application in accordance with the selection criteria and the competitive preference priorities pursuant to 34 CFR 645.30. Readers will be trained by the Department and given guidance on how to evaluate applications in a method that is both uniform and rigorous. The individual scores of the readers will be added and the sum divided by the number of readers to determine the reader score received in the review process. In accordance with 34 CFR 645.32, the Secretary will evaluate the prior experience (PE) of applicants that received a UBMS Program project grant for project years 2008–2009, 2009–2010, and 2010–2011. Based upon that evaluation, the Secretary will add PE points earned (up to 15 points) to the application's averaged reader score to determine the total score for each application. The Secretary makes new grants in rank order on the basis of the total scores of the reader scores and PE points awarded to each application. Pursuant to 34 CFR 645.30(c), if there are insufficient funds for all applications with the same total score, the Secretary will choose among the tied applications so as to serve geographical areas that have been underserved by the UBMS Program. The Secretary will not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The success of the UBMS Program is measured by the percentage of UBMS participants who enroll in and complete postsecondary education. The following performance measures have been developed to track progress toward achieving program success:

1. The percentage of UBMS students who took two years of mathematics beyond Algebra I by the 12th grade;

2. The percentage of UBMS students who enrolled in postsecondary education;

3. The percentage of UBMS students who enrolled in a program of postsecondary education by the fall term following graduation from high school and who in the first year of postsecondary education placed into college-level math and English without need for remediation;

4. The percentage of UBMS students who enrolled in a program of postsecondary education and graduated

on time—within four years for the bachelor's degree and within two years for the associate's degree;

5. The percentage of UBMS participants who enrolled in a program of postsecondary education and attained either an associate's degree within three years or a bachelor's degree within six years of enrollment;

6. The percentage of UBMS students expected to graduate high school in the reporting year who complete a Free Application for Federal Student Aid (FAFSA);

7. The percentage of former UBMS students who earned a postsecondary degree in a STEM field (*i.e.,* science, technology, engineering, or mathematics); and

8. The cost per successful participant.

Note: Because calculating some of these performance measures requires the use of data that are not already reported, the Department will be asking grantees to collect some data in addition to what are already provided each year on annual reports. These data are:

• Remediation Courses: Whether or not a student in higher education placed into college-level math and English or needed remediation in those subjects.

The Department will determine the sixth performance measure on FAFSA completion by using its own databases and, therefore, does not need additional information from grantees on this measure.

Grant recipients must collect and report data on steps they have taken toward achieving these goals. Accordingly, we request that applicants include these performance measures in conceptualizing the design, implementation, and evaluation of their proposed projects.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Sharon Easterling, Upward Bound Math and Science Program, U.S. Department of Education, 1990 K St. Room 7000, NW., Washington, DC 20006–8510. Telephone: (202) 502–7651 or by email: *sharon.easterling@ed.gov mailto:.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Delegation of Authority: The Secretary of Education has delegated authority to David Bergeron, Deputy Assistant Secretary for Policy, Planning, and Innovation to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Dated: June 15, 2012.

David Bergeron,

Deputy Assistant Secretary for Policy, Planning, and Innovation, delegated the authority to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

[FR Doc. 2012–15012 Filed 6–19–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Disability and Rehabilitation Research Projects and Centers Program; Rehabilitation Engineering Research Centers

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information:

CFDA Numbers: 84.133E–1 and 84.133E–3.

Final Priorities; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Engineering Research Centers (RERC).

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces two priorities for RERCs: Recreational Technologies and Exercise Physiology Benefiting Individuals with Disabilities (Priority 1) and Rehabilitation Robotics (Priority 2). The Assistant Secretary may use one or both of these priorities for competitions in fiscal year (FY) 2012 and later years. We take this action to focus research attention on areas of national need. We intend to use these priorities to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: *Effective Date:* These priorities are effective July 20, 2012.

FOR FURTHER INFORMATION CONTACT: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *marlene.spencer@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: This notice of final priorities (NFP) is in concert with NIDRR's currently approved Long-Range Plan (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine

the best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

This notice announces two priorities that NIDRR intends to use for RERC competitions in FY 2012 and possibly later years. However, nothing precludes NIDRR from publishing additional priorities, if needed. Furthermore, NIDRR is under no obligation to make an award for these priorities. The decision to make an award will be based on the quality of applications received and available funding.

Purpose of Program:

The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities; to develop methods, procedures, and rehabilitation technologies that maximize the full inclusion and integration of individuals with disabilities into society, and support the employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities; and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Rehabilitation Engineering Research Centers Program (RERCs)

The purpose of the NIDRR's RERCs, which are funded through the Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act by conducting advanced engineering research on and development of innovative technologies that are designed to solve particular rehabilitation problems, or to remove environmental barriers. RERCs also demonstrate and evaluate such technologies, facilitate service delivery system changes, stimulate the production and distribution of new technologies and equipment in the private sector, and provide training opportunities for early-career rehabilitation engineers. RERCs seek to solve rehabilitation problems and remove environmental barriers to improvements in employment, community living and participation, and health and function outcomes of individuals with disabilities.

The general requirements for RERCs are set out in subpart D of 34 CFR part 350 (What Rehabilitation Engineering Research Centers Does the Secretary Assist?).

Additional information on the RERC program can be found at: *www.ed.gov/rschstat/research/pubs/index.html.*

Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Applicable Program Regulations: 34 CFR part 350.

We published a notice of proposed priorities (NPP) for NIDRR's Disability and Rehabilitation Research Projects and Centers Program in the **Federal Register** on April 10, 2012 (77 FR 21547). That notice contained background information and our reasons for proposing the particular priorities.

Public Comment: In response to our invitation in the NPP, one party submitted comments on one of the proposed priorities.

Generally, we do not address technical and other minor changes. In addition, we do not address general comments that raised concerns not directly related to the proposed priorities.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priorities since publication of the NPP follows.

Recreational Technologies and Exercise Physiology Benefiting Individuals With Disabilities

Comment: One commenter requested that NIDRR revise the priority statement to more clearly state that the priority is relevant to populations across the lifespan—including children. This commenter also suggested that the priority should focus more clearly on preventing negative health and functioning outcomes, and that these prevention efforts should be aimed at children.

Discussion: Regarding the commenter's suggestion about the populations to be served under this priority, we note that nothing in the priority precludes applicants from proposing research and development projects that focus on the health and functioning of children with disabilities, or individuals with disabilities across the lifespan. However, NIDRR does not believe it is appropriate to require all applicants to define their target population in this way, because we do not wish to preclude applicants from proposing promising research and development projects that focus on other target populations. Applicants are expected to describe and justify their target population(s) in their proposals. The peer review panel will evaluate the merits of each application.

NIDRR agrees with the commenter that the priority should focus on preventing negative health and functioning outcomes. In fact, one of the stated outcomes of the RERC's activities is ''to improve physical health and reduce debilitating secondary conditions associated with disability and sedentary lifestyle.'' Given this language in the priority, we do not believe any changes are necessary to address the commenter's concern.

Changes: None.

Comment: None.

Discussion: NIDRR has decided to withdraw the proposed requirement that each funded RERC conduct a state-of-the science conference. Instead, NIDRR has added language to the fourth bulleted requirement related to dissemination to clarify that a state-of-the-science conference could be one possible means of disseminating the RERC's findings.

Changes: NIDRR has removed the requirement (reflected in the fifth proposed bulleted requirement applicable to both priorities) that each RERC conduct a state-of-the-science conference on its designated priority research area in the fourth year of the project period, and publish a comprehensive report on the final outcomes of the conference in the fifth year of the project period. We also have added language to the fourth bulleted requirement applicable to both priorities, related to dissemination. Finally, NIDRR has deleted the language that referred to the National Center for Dissemination of Disability Research. NIDRR no longer funds this center.

Final Priorities:

The Assistant Secretary for Special Education and Rehabilitative Services announces the following priorities for the establishment of a *Rehabilitation Engineering Research Center (RERC) on Recreational Technologies and Exercise Physiology Benefiting Individuals with Disabilities;* and an *RERC on Rehabilitation Robotics.* Within its designated priority research area, each RERC will focus on innovative technological solutions, new knowledge, and concepts that will improve the lives of individuals with disabilities.

Priority 1—RERC on Recreational Technologies and Exercise Physiology Benefiting Individuals With Disabilities.

Under this priority, the RERC must research, develop, and evaluate innovative technologies and strategies that will enhance recreational and physical activity opportunities for individuals with disabilities. The RERC must research, develop, or adapt technologies to capture, monitor, and

analyze energy expenditure levels in individuals with disabilities as they perform different recreational and physical activities, so that clinicians, researchers, and individuals with disabilities can better estimate the intensity and frequency of physical activity required to promote health and function within specific disability populations. In addition, the RERC must facilitate access to, and use of, recreational and physical activity equipment, facilities, and recreational programs, that improve physical health and reduce debilitating secondary conditions associated with disability and sedentary lifestyle through such means as collaboration and communication with relevant stakeholders, technical assistance, and technology transfer, in addition to research and the development and testing of innovations.

Priority 2—RERC on Rehabilitation Robotics.

Under this priority, the RERC must research, develop, and evaluate innovative technologies and strategies for the safe use of, and expanded access to, rehabilitation robotics by individuals with disabilities. This RERC must engage in research and development activities in the areas of both assistance and therapy robots for use by individuals with disabilities. The RERC must generate new knowledge and products that can improve the usability and utility of assistance robots so that they are more efficient and effective facilitators of independence and community participation. The RERC must also generate new knowledge and products that expand the use of therapy robots beyond large rehabilitation centers and into more community and home-based settings.

Requirements applicable to both priorities:

Under each priority, the RERC must be designed to contribute to the following outcomes:

(1) Increased technical and scientific knowledge relevant to its designated priority research area. The RERC must contribute to this outcome by conducting high-quality, rigorous research and development projects.

(2) Increased innovation in technologies, products, environments, performance guidelines, and monitoring and assessment tools applicable to its designated priority research area. The RERC must contribute to this outcome through the development and testing of these innovations.

(3) Improved research capacity in its designated priority research area. The RERC must contribute to this outcome by collaborating with the relevant industry, professional associations, institutions of higher education, health care providers, or educators, as appropriate.

(4) Improved usability and accessibility of products and environments in the RERC's designated priority research area. The RERC must contribute to this outcome by emphasizing the principles of universal design in its product research and development. For purposes of this section, the term ''universal design'' refers to the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design.

(5) Improved awareness and understanding of cutting-edge developments in technologies within its designated priority research area. The RERC must contribute to this outcome by identifying and communicating with relevant stakeholders, including NIDRR; individuals with disabilities and their representatives; disability organizations; service providers; editors of professional journals; manufacturers; and other interested parties regarding trends and evolving product concepts related to its designated priority research area.

(6) Increased impact of research in the designated priority research area. The RERC must contribute to this outcome by providing technical assistance to relevant public and private organizations, individuals with disabilities, employers, and schools on policies, guidelines, and standards related to its designated priority research area.

(7) Increased transfer of RERC-developed technologies to the marketplace. The RERC must contribute to this outcome by developing and implementing a plan for ensuring that all technologies developed by the RERC are made available to the public. The technology transfer plan must be developed in the first year of the project period in consultation with the NIDRR-funded Disability Rehabilitation Research Project, Center on Knowledge Translation for Technology Transfer.

In addition, under each priority, the RERC must—

- Have the capability to design, build, and test prototype devices and assist in the technology transfer and knowledge translation of successful solutions to relevant production and service delivery settings;
- Evaluate the efficacy and safety of its new products, instrumentation, or assistive devices;
- Provide as part of its proposal, and then implement, a plan that describes how it will include, as appropriate, individuals with disabilities or their representatives in all phases of its activities, including research, development, training, dissemination, and evaluation;
- Provide as part of its proposal, and then implement, a plan to disseminate its research results to individuals with disabilities and their representatives; disability organizations; service providers; professional journals; manufacturers; and other interested parties. In meeting this requirement, each RERC may use a variety of mechanisms to disseminate information, including state-of-the-science conferences, webinars, Web sites, and other dissemination methods; and
- Coordinate research projects of mutual interest with relevant NIDRR-funded projects, as identified through consultation with the NIDRR project officer.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these priorities, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this

regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are taking this regulatory action only on a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these priorities are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. These priorities will generate new knowledge through research and development. Another benefit of these priorities is that the establishment of new RERCs will improve the lives of individuals with disabilities. The new RERCs will generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities to fully participate in their communities.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: June 15, 2012.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2012–15091 Filed 6–19–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Final Priority: Disability Rehabilitation Research Project—Burn Model Systems Centers

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information

CFDA Number: 84.133A–3.

Final priority; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Project (DRRP)—Burn Model Systems Centers.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for the Disability and Rehabilitation Research Projects and Centers Program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). Specifically, this notice announces a priority for Burn Model Systems (BMS) Centers. The Assistant Secretary may use this priority for a competition in fiscal year (FY) 2012 and later years. We take this action to focus research attention on areas of national need.

DATES: *Effective Date:* This priority is effective July 20, 2012.

FOR FURTHER INFORMATION CONTACT: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue SW., Room 5140, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7338 or by email: *lynn.medley@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: This notice of final priority (NFP) is in concert with NIDRR's currently approved Long-Range Plan (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

This notice announces a final priority that NIDRR intends to use for a DRRP competition in FY 2012 and possibly later years. However, nothing precludes NIDRR from publishing additional priorities, if needed. Furthermore, NIDRR is under no obligation to make an award for this priority. The decision to make an award will be based on the quality of applications received and available funding.

Purpose of Program

The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Disability and Rehabilitation Research Projects (DRRPs)

The purpose of DRRPs, which are funded under NIDRR's Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: Research, training, demonstration, development, dissemination, utilization, and technical assistance. Additional information on DRRPs can be found at: *http://www2.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Program Regulations: 34 CFR part 350.

We published a notice of proposed priority for the Burn Model Systems Centers program in the **Federal Register** on March 7, 2012 (77 FR 13582). That notice contained background information and our reasons for proposing the particular priority.

Public Comment: In response to our invitation in the notice of proposed priority, 12 parties submitted comments on the proposed priority.

Generally, we do not address technical and other minor changes. In addition, we do not address general comments that raised concerns not directly related to the proposed priority.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priority since publication of the notice of proposed priority follows.

Comment: None.

Discussion: Upon further review of the text of the priority, we determined that it would be helpful to describe what the BMS database is.

Changes: We have added a footnote to paragraph (b) of the priority to clarify that the BMS database is a centralized database through which BMS Centers have collected and contributed information on common data elements on outcomes of individuals since 1998. The BMS database is maintained through a separate NIDRR-funded grant for a National Data and Statistical Center for the BMS.

Comment: Five commenters provided recommendations regarding the implementation of activities under paragraph (b) of the priority, which requires the assessment of long-term outcomes of individuals with burn injury by enrolling at least 30 subjects per year into the BMS database. These commenters suggested that NIDRR revise the priority to:

(a) Specify a ratio of adults to children (e.g. 2:1) to be enrolled per BMS Center in the national database;

(b) Require that the BMS Center budget two full-time equivalents (FTE) to carry out the activities required under paragraph (b);

(c) Require that the BMS Center conduct all data collection in accordance with BMS standard operating procedures and best-practices;

(d) Require the BMS Center to conduct annual follow-up assessments rather than 5-year-follow-up assessments;

(e) Increase the minimum number of persons to be enrolled per center;

(f) Increase funding for adding assessments beyond 10 years post injury because it requires a substantial increase in data collection effort over the requirements of previous BMS Center competitions; and

(g) Specify that the BMS longitudinal database include a measure of physical functioning.

Discussion: NIDRR acknowledges that significant effort will be required by BMS Centers to maintain the quality of the BMS database and to increase its research utility by extending follow-up assessments beyond 10 years post injury. With regard to the comment requesting that NIDRR define the ratio of adults to children in the BMS database, we decline to establish a ratio for the priority because we believe it is more appropriate to allow projects to make this determination on their own. We expect BMS project directors to make this determination based on the characteristics of the patient populations that they serve.

In response to comment (b) requesting that NIDRR require individual BMS Centers to budget two FTE to carry out the activities required under paragraph (b) of the priority, we note that individual centers are in the best position to determine the staffing structure they will require to carry out their database responsibilities under the priority. NIDRR does not believe it is appropriate to require a specific allocation of staff resources for this purpose. This is particularly true given that the level of effort for the database responsibilities will differ depending on the number of database participants that a Center may have recruited into the

BMS database during previous cycles of the program.

NIDRR agrees with the comment that all BMS Centers should conduct data collection in accordance with BMS standard operating procedures and best practices, as approved by NIDRR and the BMS project directors. For this reason, we are revising paragraph (b) of the priority to clarify that grantees will follow the standard operating procedures and practices established by the BMS project directors in conjunction with the National Data and Statistical Center for the BMS.

In response to the comments requesting that NIDRR increase funding to support the requirement in paragraph (b) of the priority that grantees conduct assessments beyond 10 years post injury, we note that the funding levels for the BMS Centers in fiscal year (FY) 2012 will be consistent with funding levels of previous awards made under this program and we believe that this funding is adequate to support the long-term data collection activities required under this priority. We believe the funding is adequate because NIDRR is not requiring, as part of this priority, that BMS Centers propose and conduct a collaborative module research project (a requirement included in previous BMS Centers program competitions). Thus, grantees under this priority will have a greater amount of total funding to support the increased data collection activities. That said, we do not believe that the funding levels allocated for this program are sufficient to support an increase in the frequency of follow-up assessments, or an increase in the minimum number of persons to be enrolled in the database by each center, as recommended by some commenters.

Finally, with regard to the comment that we include a measure of physical functioning in the BMS database, we decline to make this change to the requirement without the input of the BMS project directors. We believe it is more appropriate to allow the group of BMS project directors to determine whether they will incorporate a measure of physical functioning into the database.

Change: We have added language in paragraph (b) of the priority to clarify that grantees will follow the standard operating procedures and practices established by the BMS project directors in conjunction with National Data and Statistical Center for the BMS.

Comment: Two commenters requested clarification regarding the *Note* following paragraph (b) of the priority, which addresses budgeting for the activities of the BMS database under this program. Specifically, the commenters asked whether NIDRR will specify one funding level for grantees that have already enrolled patients in the BMS database and a different funding level for grantees that have no patients yet enrolled.

Discussion: We do expect funding levels to differ depending on the number of participants for which BMS Centers will need to collect follow-up data to meet the requirements of paragraph (b) of the priority. All BMS Centers funded under this competition are responsible for collecting follow-up data from subjects who will be enrolled in the grant cycle that begins in FY 2012. To the extent a grantee under a competition using this priority was previously funded under the BMS program, that grantee must also, as part of this grant, collect follow-up data from subjects who were enrolled in the BMS database in previous grant cycles. For this reason, NIDRR requests that each applicant under this priority initially budget for the activities required under paragraph (b) based on the number of follow-up assessments it expects to conduct during the project period. Final budgets for successful applicants will be negotiated with NIDRR prior to the grant award. The range of possible grant awards under this priority is specified in the notice inviting applications for the FY 2012 BMS competition, which is published elsewhere in this issue of the **Federal Register**.

Changes: We have added language to the Note that follows paragraph (b) of the priority, to provide more information about how grant award amounts are to be determined, within the range of possible grant awards that is specified in the notice inviting applications.

Comment: One commenter recommended that we revise paragraph (c) of the priority, which requires each BMS Center to propose and conduct at least one, but no more than two, site-specific research projects, so that each BMS Center is required to test interventions as part of its site-specific research project or projects.

Discussion: Paragraph (c) of the proposed priority would have required each BMS Center to test innovative approaches to treating burn injury or to assess outcomes of individuals with burn injury. In light of the comment, we believe that this language may have been unnecessarily restrictive. While NIDRR acknowledges the importance of testing innovative treatment approaches, we also acknowledge the continuing need for knowledge about the experiences and outcomes of individuals with burn injury that results from other types of research, including but not limited to, descriptive research, exploratory research, and measures development, all of which could contribute to development of innovative interventions. For this reason, we have broadened the language in paragraph (c) to clarify that applicants may propose interventions research and descriptive research, exploratory research, measures development, or other types of research that can contribute to the development of interventions for site-specific projects.

Change: NIDRR has revised paragraph (c) of the priority to state that applicants must propose and conduct at least one, but no more than two, site-specific research projects to test interventions for treating burn injury or to conduct other types of research, including but not limited to, descriptive research, exploratory research, or measures development that can contribute to development or measurement of interventions. Site-specific research projects must contribute to outcomes in one or more domains identified in the Plan: health and function, community living and participation, technology, and employment.

Comment: Two commenters requested clarification regarding the role of the BMS National Data and Statistical Center (BMS National Data Center) in the BMS Center's site-specific research projects required under paragraph (c) of the priority. In particular, the commenters asked whether the BMS National Data Center would be available to provide statistical consultation to the BMS Centers to assist them with the site-specific research projects and whether it could house data for the BMS Centers' site specific research projects.

Discussion: The BMS National Data Center priority, which will be announced in a separate notice in the **Federal Register**, does require the BMS National Data Center to make statistical and other methodological consultation available for site-specific research projects being conducted by the BMS Centers. However, the BMS National Data Center priority does not require the BMS National Data Center to house data collected during the BMS Centers' site-specific research projects. Accordingly, the BMS Centers will need to negotiate with the BMS National Data Center, if they want to house their site-specific research projects with the BMS National Data Center.

Changes: None.

Comment: Two commenters requested clarification regarding the *Note* that follows paragraph (c) of the priority, which allows for collaboration as needed for site-specific research projects. The commenters requested

clarification about three issues: (1) Whether collaborators must be other BMS Centers; (2) whether the priority allows for the identification of proposed collaborators within the application submitted for the Department's review; and, (3) whether a site-specific project could be a multi-site study.

Discussion: BMS Center applicants may propose to collaborate with third parties in order to conduct the site-specific research projects required under paragraph (c) of the priority. These collaborating entities may be, but are not required to be, other NIDRR-funded BMS Centers. To the extent an applicant plans to collaborate with others in the site-specific research projects it proposes, it may identify potential collaborators in its application, if so desired. The site-specific projects proposed by applicants under this priority can be multi-site studies that are managed and administered by the proposed BMS Center.

Changes: None.

Comment: Two commenters requested guidance regarding paragraph (d) of the priority, which requires the grantee to coordinate with the NIDRR-funded Model Systems Knowledge Translation Center (MSKT Center). The commenters asked NIDRR to indicate the level of effort it expected applicants to budget for these knowledge translation activities.

Discussion: NIDRR allows applicants the flexibility to determine the budget required to implement these activities.

Changes: None.

Comment: Three commenters noted potential synergies between the BMS database, and the database maintained by the American Burn Association (ABA). One of these commenters recommended that NIDRR revise the priority to require the BMS Centers to collaborate with the ABA to facilitate synergies between the BMS and ABA databases. The other two commenters discussed the potential for a collaboration between the BMS and the ABA to produce common data elements related to long-term outcomes of burn survivors. These two commenters noted that such collaboration with the ABA could help make the NIDRR BMS Centers' measurement of long-term outcomes more ''mainstream'' outside of the Burn Model Systems program.

Discussion: NIDRR agrees with the commenters that collaboration between the BMS Centers and the ABA may lead to improved outcomes of the BMS database and important synergies between the BMS and ABA databases. At the program level, NIDRR personnel and BMS project directors have facilitated a relationship between the BMS Centers and the ABA in past grant cycles. In the coming grant cycle, NIDRR will continue to facilitate this relationship, which will include discussions toward common, long-term data elements in both databases. NIDRR believes that synergies between the BMS program's database and the ABA database can best be achieved at the program level—between the network of NIDRR BMS Centers and the ABA. Such a relationship will not be facilitated via multiple grant applicants individually seeking a collaborative relationship with the ABA.

Changes: None.

Comment: Six commenters posed questions regarding paragraph (e) of the proposed priority, which specified that the grantee should spend $5,000 towards the costs of a state-of-the-science conference. One commenter asked whether the specified dollars could be used for travel to the conference and dissemination of information following the conference. Another commenter asked whether the specified amount included indirect costs associated with the conference. Other commenters recommended that NIDRR specify in the priority the timeframe for holding the conference and that the themes of the conference be on quality of care, patient satisfaction, and long-term patient outcomes. Finally, one commenter asked whether grantees would be required to coordinate with the ABA and other agencies in sponsoring the conference.

Discussion: NIDRR has decided to withdraw the proposed requirement that BMS Centers budget to support a state-of-the-science conference. Instead, NIDRR is adding language to paragraph (d) of the priority that suggests including a state-of-the-science meeting as one possible means of collaboratively conducting knowledge translation activities that might be used to disseminate research findings from the BMS Centers program. BMS Centers have the freedom to determine the amount of funds that they might set aside for such activities, including any activities in conjunction with the MSKT Center.

Changes: NIDRR has removed the requirement stated in proposed paragraph (e). It has added language to paragraph (d) of the priority to identify state-of-the-science meetings as one means of facilitating dissemination of research findings to stakeholders.

Comment: Three commenters requested clarification regarding proposed paragraph (f) of the priority, which required that grantees address the needs of individuals with burn injuries, including individuals from one or more traditionally underserved populations. The commenters requested clarification from NIDRR regarding the types of individuals that are included in the category ''traditionally underserved populations'' and whether activities that address the clinical needs of these persons are subject to funding under this priority.

Discussion: Paragraph (f) of the proposed priority (redesignated as paragraph (e) in the final priority) requires each BMS Center to address the needs of individuals with burn injuries, including individuals from one or more traditionally underserved populations through its project. The Rehabilitation Act authorizes the research activities that are administered by NIDRR, including the research activities under the BMS Centers program. While section 21 of the Rehabilitation Act, titled *Traditionally Underserved Populations,* does not define the term ''traditionally underserved,'' it does provide an in-depth discussion of populations that experience inequitable treatment and poor outcomes in the vocational rehabilitation process. Section 21 of the Rehabilitation Act specifically mentions groups of racial and ethnic minorities with disabilities, including Latinos, African Americans, Asian Americans, and American Indians with disabilities. For purposes of this priority, we expect applicants to describe how they will fulfill the priority's requirement to address the needs of individuals with burn injuries from traditionally underserved populations, as that term is described in section 21 of the Rehabilitation Act. The peer review process will evaluate the merits of each application.

With regard to the question concerning clinical services to individuals with burn injuries from traditionally underserved populations, we note that NIDRR program funds are used to sponsor research and development activities and, therefore, can only be used to support clinical services that constitute a part of the research process. For example, the provision of treatment as part of a clinical trial, or the development of consumer education materials as part of an evidence-based knowledge translation process are allowable research activities for which grant funds under this priority may be used.

Changes: With the removal of proposed paragraph (e) of the priority, NIDRR has redesignated proposed paragraph (f) final paragraph (e). In addition, we have revised this paragraph to include a cross-reference to

the Rehabilitation Act's discussion of traditionally underserved populations.

Comment: Two commenters requested guidance regarding proposed paragraph (g) of the priority, which required that grantees ensure that input of individuals with burn injuries is used to shape BMS research activities. Specifically, the commenters asked NIDRR to clarify the scope of the activities it expects grantees to engage in to meet this proposed requirement as well as the corresponding budget for these activities. In addition, one commenter requested that NIDRR specify the potential collaborators, such as the Phoenix Society, with which grantees could work with to carry out these activities.

Discussion: It is NIDRR's intent that input from persons with burn injuries will inform all research conducted under the BMS Centers program. This includes the site-specific research to be conducted under paragraph (c) of this priority and the research conducted by the system of BMS Centers through the BMS database. For purposes of this priority, each applicant is expected to describe in its application the activities it will conduct to ensure that input from persons with burn injuries shape its site-specific research project or projects. NIDRR allows applicants the flexibility to determine the budget required to implement these activities. NIDRR also allows applicants the flexibility to determine the methods it will use for receiving input from consumers.

With respect to specifying potential collaborators, such as the Phoenix Society, we decline to do so because NIDRR does not have a sufficient basis for requiring all applicants to collaborate with the Phoenix Society. However, applicants are free to propose such a collaboration.

Changes: We have redesignated paragraph (g) of the proposed priority to paragraph (f).

Comment: One commenter recommended that we revise the priority to clarify that applicants must budget for travel to and participation in the face-to-face BMS project directors' meeting, and to participate in the regularly scheduled conference calls of the BMS project directors.

Discussion: In keeping with prior practice, NIDRR expects the Project Directors of the BMS Centers to participate in two Project Directors' meetings per year (one to be held in the greater Washington, DC and one in conjunction with the annual ABA Conference). Applicants must budget for the costs of having their project directors travel to and participate in these meetings. NIDRR also expects BMS project directors to participate in regularly scheduled conference calls of this group. The purpose of these meetings is to establish policies and procedures with NIDRR input for BMS activities, to share research findings across the BMS program, to facilitate NIDRR program officer knowledge of the progress on grant activities, to discuss database issues, and to foster successful development of the BMS program.

Changes: NIDRR has added paragraph (g) to the priority. This new paragraph states that the BMS Center must ensure that its project director participates in the following:

(1) Two annual face-to-face BMS Center Project Director meetings, one of which will take place in the greater Washington, DC area and once in conjunction with the annual ABA Convention.

(2) Additional meetings of the BMS Center Project Directors that are held on a regular basis via conference call.

Comment: One commenter asked whether the BMS Centers would be required to engage in a collaborative module research project. The commenter recommended that such a project be funded under a separate program priority.

Discussion: Grantees under the BMS Centers priority are not required to engage in a collaborative module research project.

Changes: None.

Final Priority

Priority—Burn Model Systems (BMS) Centers

The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for the funding of Burn Model Systems Centers (BMS Centers). The BMS Centers must provide comprehensive, multidisciplinary services to individuals with burn injury and conduct research that contributes to evidence-based rehabilitation interventions and clinical and practice guidelines. The BMS Centers must generate new knowledge that can be used to improve outcomes of individuals with burn injury in one or more domains identified in NIDRR's currently approved Long Range Plan, published in the **Federal Register** on February 15, 2006 (71 FR 8166): health and function, participation and community living, technology, and employment. Each BMS Center must contribute to this outcome by—

(a) Providing a multidisciplinary system of rehabilitation care specifically designed to meet the needs of individuals with burn injury, including but not limited to, physical, psychological, and community reintegration needs. The system must encompass a continuum of care, including emergency medical services, acute care services, acute medical rehabilitation services, and post-acute services;

(b) Continuing the assessment of long-term outcomes of individuals with burn injury by enrolling at least 30 subjects per year into the BMS database,[1] and collecting follow-up data on all subjects enrolled in the database at 6 months, and at 1, 2, 5, and 10 years post injury (as is being done in the current grant cycle) and extending the assessment to every five years thereafter, following standard operating procedures and practices established by the BMS Project Directors in conjunction with the National Data and Statistical Center for the BMS and the established protocols for the collection of enrollment and follow-up data on subjects;

Note: BMS Centers will be funded at varying amounts up to the maximum award based on the numbers of BMS database participants from whom BMS Centers must collect follow-up data. To the extent a grantee under a competition using this priority was previously funded under the BMS program, that grantee must also, as part of this grant, collect follow-up data from subjects who were enrolled in the BMS database in previous grant cycles. For this reason, NIDRR requests that each applicant under this priority initially budget for the activities required under paragraph (b) based on the number of follow-up assessments it expects during the project period. BMS Centers that have previously been BMS grantees with large numbers of database participants will receive more funding within the specified range than BMS Centers with fewer participants, as determined by NIDRR after applicants are selected for funding. Applicants must include in their budgets specific estimates of their costs for follow-up data collection. Funding will be determined individually for each successful applicant, up to the maximum allowed, based upon the documented workload associated with the follow-up data collection, other costs of the grant, and the overall budget of the research project.

(c) Proposing and conducting at least one, but no more than two, site-specific research projects to test interventions for treating burn injury or to conduct other types of research, including but not limited to, descriptive research, exploratory research, or measures

[1] The BMS database is a centralized database through which BMS Centers have collected and contributed information on common data elements on outcomes of individuals since 1998. The BMS database is maintained through a separate NIDRR-funded grant for a National Data and Statistical Center for the BMS. (Additional information on the BMS database can be found at *http://bms-dcc.ucdenver.edu/*).

development that can contribute to development or measurement of interventions. Site-specific research projects must contribute to outcomes in one or more domains identified in the Plan: health and function, community living and participation, technology, and employment;

Note: Applicants who propose more than two site-specific research projects will be disqualified. Site-specific research projects may include collaborating with entities as needed for execution of the research project.

(d) Coordinating with the NIDRR-funded Model Systems Knowledge Translation Center (MSKTC) (*http://www.msktc.org/*) to provide scientific results and information for dissemination to clinical and consumer audiences, using a variety of mechanisms that could include state-of-the-science meetings, webinars, Web sites, and other dissemination methods;

(e) Addressing the needs of individuals with burn injuries, including individuals from one or more traditionally underserved populations, as discussed in section 21 of the Act, 29 U.S.C. 718;

(f) Ensuring that the input of individuals with burn injuries is used to shape BMS research activities; and

(g) Ensuring that its project director participates in the following:

(1) Two annual face-to-face BMS Center Project Director meetings, one of which will take place in the greater Washington, DC area and once in conjunction with the annual American Burn Association Convention.

(2) Additional meetings of the BMS Center Project Directors that are held on a regular basis via conference call.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing this final priority only on a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Summary of Potential Costs and Benefits

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. This final priority will generate new knowledge through research and development.

Another benefit of the final priority is that establishing new DRRPs will improve the lives of individuals with disabilities. The new DRRPs will provide support and assistance for NIDRR grantees as they generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities to perform regular activities of their choice in the community.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: June 15, 2012.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2012–15051 Filed 6–19–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14367–001]

Don W. Gilbert Hydro Power, LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Minor License.

b. *Project No.:* 14367–001.

c. *Date filed:* May 30, 2012.

d. *Applicant:* Don W. Gilbert Hydro Power, LLC.

e. *Name of Project:* Gilbert Hydroelectric Project.

f. *Location:* The project would utilize unnamed springs near the Bear River, eight miles southwest of Grace in Caribou County, Idaho. The project would be located on lands owned by the applicant and would not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r) [For 5-MW exemptions, use the following language instead: Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.]

h. *Applicant Contact:* Don W. Gilbert and DeAnn G. Somonich, Don W. Gilbert Hydro Power, LLC, 1805 Grace Power Plant Road, Grace, Idaho 83241. Phone: (801) 725–1754.

i. *FERC Contact:* Kelly Wolcott, (202) 502–6480 or *kelly.wolcott@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* July 30, 2012.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

m. The application is not ready for environmental analysis at this time.

n. *The Gilbert Project would consist of the following new features:* (1) A 8-foot-long, 3-foot-wide, 3-foot-deep drop inlet structure; (2) a 2-foot-diameter, 700-foot-long partially buried steel or plastic penstock; (3) a powerhouse containing two 45-kilowatt (kW) turbine/generator units for a total installed capacity of 90 kW; (4) a tailrace to convey flows from the powerhouse to the Bear River; (5) a 150-foot-long, 480-kilovolt transmission line; and (6) appurtenant facilities. The project is estimated to generate an average of 550 megawatthours annually. The project would be located on lands owned by the applicant

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural schedule:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate (e.g., if scoping is waived, the schedule would be shortened).

Issue Deficiency and/or Additional Information Letter.	July 2012.
Issue Notice of Acceptance	August 2012.
Issue Scoping Document	August 2012.
Issue Notice of Ready for Environmental Analysis.	October 2012.
Commission issues EA	February 2013.

Dated: June 12, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–14984 Filed 6–19–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD12–16–000]

Capacity Deliverability Across the Midwest; Independent Transmission System Operator, Inc.; PJM Interconnection, L.L.C. Seam; Notice Establishing Comment Period

On June 11, 2012, the Commission issued a notice seeking comments regarding ''Capacity Deliverability Across the Midwest Independent Transmission System Operator, Inc./PJM Interconnection, L.L.C. Seam.'' *139 FERC ¶ 61,200 (2012).*

Notice is hereby given that interested parties should submit comments on or before August 10, 2012. Reply comments must be filed on or before August 27, 2012.

Dated: June 13, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–14985 Filed 6–19–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF12–14–000]

Questar Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for the Planned JL 47 Loop Project, Request for Comments on Environmental Issues, and Notice of Onsite Review

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the JL 47 Loop Project, involving construction and operation of facilities by Questar Pipeline Company (Questar) in Duchesne County, Utah. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on July 16, 2012.

The Commission staff will also conduct an environmental site review of the planned JL 47 Loop Project route. All interested parties planning to attend must provide their own transportation. Those attending should meet at the following locations:

FERC Environmental Site Review JL 47 Loop Project

Holiday Inn Express, 1515 West U.S. Highway 40, Vernal, UT, June 27, 2012, at 8 a.m.

Because of the driving distance, we will be leaving promptly at 8 a.m.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*www.ferc.gov*). This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of the Planned Project

Questar plans to construct and operate up to about 14.7 miles of 16-inch-diameter loop pipeline [1] from its Main Lines 40/104 at Pete's Wash northward to its Brundage Mountain Area receipt point (about 6 miles south of Myton), all in Duchesne County, Utah. The planned loop would be co-located with Questar's existing Jurisdictional Lateral (JL) 47 and Jurisdictional Tie Lateral 78 pipelines except where deviations are necessary to avoid other existing natural gas facilities or terrain constraints. The project would increase transportation capacity by about 60,000 dekatherms of natural gas per day. Questar states its project would provide much-needed capacity to transport Uinta Basin production to major delivery markets.

The JL 47 Loop Project would consist of the following facilities:

- Up to about 14.7 miles of 16-inch-diameter steel pipeline loop;
- A tie-in to Questar's existing Main Line 40 at Pete's Wash (milepost 0), consisting of ancillary valves and a pig receiver; [2]
- A tap and valve at milepost 12.5 (North Monument Butte Area Tap); and
- A meter, ancillary valves, and pig launcher at milepost 14.7 (Brundage Mountain Area Tap).

The general location of the project facilities is shown in appendix 1.[3]

Land Requirements for Construction

Construction of the planned facilities would disturb about 186 acres of land for the aboveground facilities and the pipeline. A majority of the land required for the project is managed by the U.S. Department of the Interior's Bureau of Land Management, Vernal District. Following construction, Questar would maintain about 89 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses. About 82 percent of the planned pipeline route parallels existing pipeline, utility, or road rights-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the potential environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [4] to discover and address concerns the public may have about proposals. This process is referred to as *scoping.* The main goal of the scoping process is to focus the analysis in the

[1] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

[2] A ''pig'' is a tool that is inserted into and pushed through the pipeline for cleaning, conducting internal inspections, or other purposes.

[3] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[4] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA, we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- Land use;
- Water resources;
- Cultural resources;
- Vegetation and wildlife; and
- Endangered and threatened species.

We will also evaluate possible alternatives to the planned project, and make recommendations on how to lessen or avoid impacts on the various resources.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the FERC receives an application. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA.

The EA will present our independent analysis of the issues. The EA will be available in the public record through the Commission's eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section beginning on page 5.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate with us in the preparation of the EA.[5] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. Currently, the U.S. Department of the Interior's Bureau of Land Management/Vernal District has expressed its intention to participate as a cooperating agency in the preparation of the EA to satisfy its NEPA responsibilities related to this project.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the Utah State Historic Preservation Office, and to solicit its views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[6] We will define the project-specific Area of Potential Effect in consultation with the Utah State Historic Preservation Office as the project develops. On natural gas facility projects, the Area of Potential Effect, at a minimum, encompasses all locations subject to ground disturbance (examples include the construction right-of-way, contractor/pipe storage yards, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before July 16, 2012.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (PF12–14–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You can file your comments electronically using the eComment feature located on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the eFiling feature located on the Commission's Web site (www.ferc.gov) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project. If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you wish to receive no further mailings concerning environmental review of Questar's planned JL 47 Lateral Project, please use the return mailer attached as appendix 2 to notify us and you will be deleted from the environmental mailing list.

Becoming an Intervenor

Once Questar files its application with the Commission, you may want to become an ''intervenor,'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be

[5] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are found at title 40 of the Code of Federal Regulations, 1501.6.

[6] The Advisory Council on Historic Preservation regulations are found at title 36 of the Code of Federal Regulations, part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (i.e., PF12–14). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or additional site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: June 14, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–15034 Filed 6–19–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

	Docket Nos.
Solano 3 Wind LLC	EG12–36–000
Atlantic Power (Coastal Rivers) Corporation	EG12–37–000
Atlantic Power (Williams Lake) Ltd	EG12–38–000
Atlantic Power Preferred Equity, Ltd	EG12–39–000
Atlantic Power Limited Partnership	EG12–40–000
Magic Valley Wind Farm I, LLC	EG12–41–000
Wildcat Wind Farm I, LLC	EG12–42–000
Diamond State Generation Partners, LLC	EG12–44–000
Palouse Wind, LLC	EG12–45–000
Silver State Solar Power North, LLC	EG12–46–000
Wellhead Power Delano, LLC	EG12–47–000
Ensign Wind, LLC	EG12–48–000
Tuscola Bay Wind, LLC	EG12–49–000
Minco Wind III, LLC	EG12–50–000
Alta Wind VII, LLC	EG12–51–000
Alta Wind IX, LLC	EG12–52–000

Take notice that during the month of May 2012, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Dated: June 12, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–14986 Filed 6–19–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ12–10–000]

Oncor Electric Delivery Company LLC; Notice of Filing

Take notice that on May 16, 2012, Oncor Electric Delivery Company LLC submitted its tariff filing per 35.28(e): Oncor TFO Tariff Rate Changes Effective September 29, 2010 to be effective 10/7/2010.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 28, 2012.

Dated: June 14, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–15037 Filed 6–19–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1989–000]

SunPower Corporation, Systems; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of SunPower Corporation, Systems's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 2, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 11, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–14981 Filed 6–19–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1987–000]

O.L.S. Energy-Agnews, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of O.L.S. Energy-Agnews, Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 2, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 11, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–14982 Filed 6–19–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2804–027]

Goose River Hydro, Inc.; Independence Hydro, LLC; Notice of Application for Transfer of License, and Soliciting Comments and Motions to Intervene

On June 6, 2012, Goose River Hydro, Inc. (transferor) and Independence Hydro, LLC (transferee) filed an application for the transfer of license for the Goose River Project (FERC No. 2804), located on the Goose River in Waldo County, Maine.

Applicants seek Commission approval to transfer the license for the Goose River Project from the transferor to the transferee.

Applicants' Contact: Transferor: Ms. Catherine Gleeson, President, Goose River Hydro, Inc., P.O. Box 402, Belfast, ME 04917, (540) 535–8137. Transferee: Mr. Clifford Ginn, Manager, Independence Hydro, LLC, 220 Maine Mall Road, South Portland, ME 01406, (207) 274–0001.

FERC Contact: Patricia W. Gillis (202) 502–8735, *patricia.gillis@ferc.gov.*

Deadline for filing comments and motions to intervene: 30 days from the issuance date of this notice. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1) and the instructions on the Commission's Web site under *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your

comments. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original plus seven copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. More information about this project can be viewed or printed on the eLibrary link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–2804) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Dated: June 14, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–15038 Filed 6–19–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–472–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

Take notice that on June 4, 2012, Williston Basin Interstate Pipeline Company (Wiliston Basin), 1250 West Century Avenue, Bismark, North Dakota, 58503, filed in Docket No. CP12–472–000, an application pursuant to Sections 157.210 and 157.213(b) of the Commission's Regulations under the Natural Gas Act (NGA) as amended and Williston Basin's blanket certificate issued in Docket Nos. CP82–487–000, *et al.,*[1] for the acquisition and operation of natural gas facilities in Sheridan County and Campbell County, Wyoming and modification of underground storage facilities at its Baker Storage Reservoir in Fallon County, Montana. The details of Williston Basin's proposal is more fully set forth in the application which is on file with the Commission and open to the public for inspection.

Williston Basin proposes to acquire about 74 miles of 16-inch diameter pipeline from Bitter Creek Pipelines, LLC (Bitter Creek), which currently performs a non-jurisdictional gathering function, as well as installing filtration equipment at its Monarch Compressor Station. Together these facilities will enable Williston Basin to increase the firm storage deliverability from its Baker Storage Reservoir that it will use to make up for declining deliverability from its Billy Creek Storage Reservoir on its Sheridan Subsystem. Williston Basin states that its proposal will increase system security and reliability by connecting its stand-alone Sheridan Subsystem with the rest of its transmission facilities and, ultimately allow for the future abandonment of its Billy Creek Storage facility. Williston Basin estimates that the cost of the project will be approximately $8,367,00.00.

Any questions concerning this prior notice request may be directed to Keith A. Tiggelaar, Director of Regulatory Affairs, Williston Basin Interstate Pipeline Company, 1250 West Century Avenue, Bismarck, North Dakota 58503, (701) 530–1560 or via email at *keith.tiggelaar@wbip.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: June 14, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–15036 Filed 6–19–12; 8:45 am]

BILLING CODE 6717–01–P

[1] 30 FERC ¶ 61,143

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2203–013—Alabama Holt Hydroelectric Project]

Alabama Power Company; Notice of Revised Restricted Service List for a Programmatic Agreement

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.2010, provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding. The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

Commission staff is consulting with the Alabama State Historic Preservation Officer (Alabama SHPO) and the Advisory Council on Historic Preservation (Advisory Council) pursuant to the Advisory Council's regulations, 36 CFR part 800, implementing section 106 of the National Historic Preservation Act, as amended, (16 U.S.C. 470f), to prepare a Programmatic Agreement (PA) for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at the Holt Hydroelectric Project. The PA, when executed by the Commission, the Alabama SHPO, and the Advisory Council, would satisfy the Commission's section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13(e)).

On August 30, 2011, Commission staff established a restricted service list for the Holt Hydroelectric Project. On June 6, 2012, the Jena Band of Choctaw Indians requested revisions to the restricted service list. The revisions are:

''Chief Christine Norris'' is replaced with ''Chief B. Cheryl Smith;''
''Michael Tarpley, THPO'' is replaced with ''Dana Masters, THPO.''

Dated: June 12, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–14983 Filed 6–19–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11175–024]

Crown Hydro LLC; Notice of Initiation of Proceeding To Terminate License By Implied Surrender and Soliciting Comments and Motions To Intervene

Take notice that the following hydroelectric proceeding has been initiated by the Commission:

a. *Types of Proceeding:* Termination of License by Implied Surrender.

b. *Project No.:* 11175–024.

c. *Date Initiated:* June 14, 2012.

d. *Licensee:* Crown Hydro, LLC.

e. *Name and Location of Project:* The 3.4-Megawatt (MW) Crown Mill Hydroelectric Project is located at the Upper St Anthony Falls Dam on the Mississippi River in the City of Minneapolis, Hennepin County, Minnesota.

f. *Proceeding Initiated Pursuant to:* Standard Article 35 of the Project's license.

g. *FERC Contact:* Mrs. Anumzziatta Purchiaroni, (202) 502–6191, *anumzziatta.purchiaroni@Ferc.gov.*

h. *Deadline for filing comments, protest, and motions to intervene:* July 19, 2012.

Comments, Motions to Intervene, and Protests may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. Include the project number (P–11175–024) on any documents or motions filed. To paper-file, an original and eight copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. For more information on how to submit these types of filings, please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

i. *Description of Existing Facilities:* The licensee has performed no on-site construction or ground-disturbing activities.[1]

j. *Description of Proceeding:* The Commission has initiated this Termination of License by Implied Surrender proceeding for the Crown Mill Hydroelectric Project No. 11175 because over 13 years have passed since the issuance of the license, the licensee has failed to complete construction of the project as licensed, and its filings fail to show it can do so in the near future.

In 1999 the Commission issued a major license for the 3.4-megawatt (MW) Crown Mill Hydroelectric Project. The authorized project includes: A reconstructed upper canal and intake tunnel; a powerhouse located at the basement of the Crown Roller Mill Building and containing two hydropower units with a total capacity of 3.4 MW; an existing tailrace tunnel and a reconstructed tailrace canal; and an underground transmission line.

Standard Article 35 of the license for Project No. 11175 provides, in pertinent part:

> If the licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license.[2]

In 2002, the licensee filed an application to amend the license to relocate the powerhouse to the east side of the West River Parkway in the footprint of the remains of the Holly and Cataract Mill Foundation owned by the Minneapolis Park and Recreation Board (Park Board) because it stated it could not secure a lease agreement with the owner of the Crown Roller Building and, therefore, it could not construct the project as licensed. In 2005, the Commission dismissed the licensee's amendment application on the grounds that the licensee could not show that it could obtain the necessary property rights from the Park Board.[3]

On May 25, 2011, Commission staff sent the licensee a letter stating that the staff considered the project to have been abandoned and that it was the licensee's intent to surrender the license and asking the licensee to show cause why the Commission, based upon these conclusions, should not terminate the license. The licensee responded on June 23, 2011, stating its intent to file yet another amendment application to develop a substantially different project that would be located in the headrace canal adjacent to the U.S. Army Corps of Engineers (USACE) Lock and Dam and on USACE lands. This response and subsequent filings of the licensee indicates that it is in the very early stages of preparing a license amendment application that will materially alter the project facilities and their locations from those as originally licensed. After more than 13 years since the issuance of the license, there is still no expectation that the licensee will complete construction of the project in the foreseeable future.

k. Individuals desiring to be included on the Commission's mailing list for this proceeding should so indicate by writing to the Secretary of the Commission.

l. *Filing and Service of Responsive Documents:* Any filing must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the proceeding (P–11175–024).

m. *Agency Comments*—Federal, states, and local agencies are invited to file comments on the described proceeding. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

Dated: June 14, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–15039 Filed 6–19–12; 8:45 am]

BILLING CODE 6717–01–P

[1] The licensee met the March 2003 deadline to commence project construction by initiating turbine manufacture. *See* June 19, 2003 letter from Commission staff.

[2] *Crown Hydro Co.,* 86 FERC ¶ 62, 209, at 64,289, incorporating by reference form L–6 (Revised Oct. 1975), entitled ''Terms and Conditions of License for Unconstructed Major Project Affecting Navigable Waters and Lands of the United States,'' 54 F.P.C. 1792 (1975).

[3] *See Crown Hydro LLC,* 110 FERC ¶ 62,121 (2005), *order denying reh'g and request for abeyance,* 111 FERC ¶ 61,315 (2005).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9690–7]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for CF&I Steel, L.P. dba EVRAZ Rocky Mountain Steel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This document announces that the EPA Administrator has responded to a citizen petition asking EPA to object to an operating permit issued by the Colorado Department of Public Health and Environment (CDPHE). Specifically, the Administrator has denied in part and granted in part the March 24, 2011, Petition (Petition), submitted under title V of the Clean Air Act (Act) by WildEarth Guardians (Petitioner), to object to CDPHE's December 28, 2010 Permit (Permit) issued to CF&I Steel, L.P. dba EVRAZ Rocky Mountain Steel (ERMS or EVRAZ).

Pursuant to sections 307(b) and 505(b)(2) of the Act, a petition for judicial review of those portions of the Order that deny issues in the Petition may be filed in the United States Court of Appeals for the appropriate circuit within 60 days from the date this notice appears in the **Federal Register**.

ADDRESSES: You may review copies of the final Order, the Petition, and other supporting information at the EPA Region 8 Office, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the copies of the final Order, the Petition, and other supporting information. You may view the hard copies Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays. If you wish to examine these documents, you should make an appointment at least 24 hours in advance. Additionally, the final Order for CF&I Steel, L.P. dba EVRAZ Rocky Mountain Steel is available electronically at: *http://www.epa.gov/region07/air/title5/petitiondb/petitions/evraz_response2011.pdf.*

FOR FURTHER INFORMATION CONTACT: Donald Law, Air Program (8P–AR), EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Phone: (303) 312–7015. Email: *law.donald@epa.gov.*

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review and object to, as appropriate, a title V operating permit proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator, within 60 days after the expiration of this review period, to object to a title V operating permit if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period. EPA received a petition from WildEarth Guardians dated March 24, 2011, requesting that EPA object to the issuance of the Permit to EVRAZ for steelmaking operations located in Pueblo, Colorado. The Petition alleges that the Permit fails to ensure compliance with applicable requirements under the Act in that: (I) The Permit fails to assure compliance with the electric arc furnace regulations under 40 CFR 63.10680 *et seq.;* (II) the Permit fails to ensure that EVRAZ does not cause or contribute to a violation of the National Ambient Air Quality Standards (NAAQS); (III) the Permit fails to include stipulated penalties from an underlying Consent Decree; and (IV) the permitting authority failed to adequately address environmental justice impacts.

On May 31, 2012, the Administrator issued an Order granting in part and denying in part the Petition. The Order explains the reasons behind EPA's conclusions.

Dated: June 12, 2012.

Judith Wong,

Acting Regional Administrator, Region 8.

[FR Doc. 2012–15016 Filed 6–19–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9690–5]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of the State of Illinois' request to revise its EPA-authorized program under the ''Approval and Promulgation of State Implementation Plans'' requirements in the *Code of Federal Regulations* to allow electronic reporting.

DATES: EPA's approval is effective June 20, 2012.

FOR FURTHER INFORMATION CONTACT: Evi Huffer, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–1697, *huffer.evi@epa.gov,* or Karen Seeh, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–1175, *seeh.karen@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On August 10, 2010, the Illinois Environmental Protection Agency (ILEPA) submitted an amended application titled ''Electronic Annual Emissions Report Electronic Document Receiving System'' for revision of its EPA-authorized Part 52 program under title 40 CFR. EPA reviewed ILEPA's request to revise its EPA-authorized program and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions set out in 40 CFR part 3, subpart D. In accordance with 40 CFR

3.1000(d), this notice of EPA's decision to approve Illinois' request to revise its Part 52—Approval and Promulgation of Implementation Plans authorized program to allow electronic reporting of air emissions data under 40 CFR part 51, is being published in the **Federal Register**. ILEPA was notified of EPA's determination to approve its application with respect to this authorized program.

Dated: June 13, 2012.

Andrew Battin,

Director, Office of Information Collection.

[FR Doc. 2012–15048 Filed 6–19–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9690–6]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of Delaware

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of the State of Delaware's request to revise its EPA-authorized program under the ''Approval and Promulgation of State Implementation Plans'' requirements in the *Code of Federal Regulations* to allow electronic reporting.

DATES: EPA's approval is effective June 20, 2012.

FOR FURTHER INFORMATION CONTACT: Evi Huffer, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–1697, *huffer.evi@epa.gov,* U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–1175, *seeh.karen@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Regulation (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements. Once an authorized program has EPA's approval to accept electronic documents under certain programs, CROMERR § 3.1000(a)(4) requires that the program keep EPA apprised of any changes to laws, policies, or the electronic document receiving systems that have the potential to affect the program's compliance with CROMERR § 3.2000.

On August 19, 2011, the Delaware Department of Natural Resources and Environmental Control (DE DNREC) submitted an amended application titled ''Online Reporting System Electronic Document Receiving System'' for revision of its EPA-approved electronic reporting program under its title 40 CFR part 52 authorized program to allow new electronic reporting. EPA reviewed DE DNREC's request to revise its EPA-authorized program and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Delaware's request to revise its Part 52—Approval and Promulgation of Implementation Plans authorized program to allow electronic reporting of permits for minor sources under 40 CFR parts 51, is being published in the **Federal Register**. DE DNREC was notified of EPA's determination to approve its application with respect to this authorized program.

Dated: June 13, 2012.

Andrew Battin,

Director, Office of Information Collection.

[FR Doc. 2012–15019 Filed 6–19–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9690–2]

Delegation of Authority to the State of Maryland To Implement and Enforce Additional or Revised National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: On April 16, 2012, EPA sent the State of Maryland (Maryland) a letter acknowledging that Maryland's delegation of authority to implement and enforce National Emissions Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS) had been updated, as provided for under previously approved delegation mechanisms. To inform regulated facilities and the public of Maryland's updated delegation of authority to implement and enforce NESHAP and NSPS, EPA is making available a copy of EPA's letter to Maryland through this notice.

DATES: On April 16, 2012, EPA sent Maryland a letter acknowledging that Maryland's delegation of authority to implement and enforce NESHAP and NSPS had been updated.

ADDRESSES: Copies of documents pertaining to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029. Copies of Maryland's submittal are also available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230. Copies of Maryland's notice to EPA that Maryland has updated its incorporation by reference of Federal NESHAP and NSPS, and of EPA's response, may also be found posted on EPA Region III's Web site at: *http://www.epa.gov/reg3artd/airregulations/delegate/mddelegation.htm.*

FOR FURTHER INFORMATION CONTACT: Ray Chalmers, (215) 814–2061, or by email at *chalmers.ray@epa.gov.*

SUPPLEMENTARY INFORMATION: On March 7, 2012, Maryland notified EPA that Maryland has updated its incorporation by reference of Federal NESHAP under 40 CFR part 63 and NSPS under 40 CFR part 60 to include all current and future standards. On April 16, 2012, EPA sent

Maryland a letter acknowledging that Maryland now has the authority to implement and enforce the NESHAP and NSPS as specified by Maryland in its notice to EPA, as provided for under previously approved automatic delegation mechanisms. All notifications, applications, reports and other correspondence required pursuant to the delegated NESHAP and NSPS must be submitted to both the US EPA Region III and to the Maryland Department of Environment. A copy of EPA's letter to Maryland follows:

''Mr. George S. Aburn, Jr.
Director, Air and Radiation Management Administration
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230

Dear Mr. Aburn:

Thank you for your letter of March 7, 2012 informing the United States Environmental Protection Agency (EPA) that the State of Maryland (Maryland) has acted to obtain updates of its existing delegations of authority to implement and enforce federal National Emissions Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS).

As you know, EPA's previous delegations to Maryland of the authority to implement and enforce various NESHAP found at 40 CFR parts 61 and 63 and of various NSPS found at 40 CFR part 60 provide that Maryland may obtain automatic delegation of authority to implement and enforce updated or additional NESHAP and NSPS.[1] For Maryland to obtain automatic delegation of additional standards, the primary requirement is that Maryland must have included the updated or additional standards by reference into Maryland's regulations. In some cases Maryland must also have provided notice to EPA and/or committed to enforcing the standards in accordance with the provisions of the applicable previous EPA delegation(s) of authority to Maryland.

In your letter you notify EPA that Maryland has ''acted to obtain updates to its delegations of authority to implement and enforce NESHAP and NSPS to include all current and future:

- NESHAP under 40 CFR Part 63; and
- NSPS under 40 CFR Part 60.''

You note that the Code of Maryland Regulations (COMAR) specifies Maryland's requirements pertaining to control of NESHAP and NSPS sources. You state that ''[i]n accordance with COMAR 26.11.15.02, NESHAP sources in Maryland may not be constructed, modified, or operated in any way which will result in violation of any provisions of 40 CFR Part 63.'' You also note that ''[i]n accordance with COMAR 26.11.06.12, NSPS sources in Maryland may not be constructed, modified, or operated in any way which will result in violation of any provisions of 40 CFR Part 60.''

You explain that Maryland has updated the COMAR to specify that Maryland has adopted all current and future NESHAP found at 40 CFR part 63 and NSPS found at 40 CFR part 60 by reference. You further explain that Maryland accomplished this by updating its definitions of a NESHAP source, found at COMAR 26.11.01.01B(21), and its definition of a NSPS source, found at COMAR 26.11.01.01B(23). You state that Maryland intends to implement all delegated current and future NESHAP found at 40 CFR part 63 and NSPS found at 40 CFR part 60 in conformance with the terms of the applicable previous EPA delegations of authority to Maryland.

You provided EPA with copies of notices Maryland published in the *Maryland Register* proposing and finalizing the revised COMAR definitions of a NESHAP source and of a NSPS source.

EPA notes that the final action notice which Maryland provided, dated February 24, 2012, confirms Maryland's revision of Title 26, Department of the Environment, Subtitle 11, Air Quality to adopt the revised definitions. The notice states that:

''On February 9, 2012, the Secretary of the Environment adopted amendments to:

(1) Regulation .01 under COMAR 26.11.01—General Administrative Provisions; and

(2) Regulation .12 under COMAR 26.11.06—General Emission Standards, Prohibitions, and Restrictions.

This action, which was proposed for adoption in 38:25 Md. R. 1647–1648 (December 2, 2011) has been adopted as proposed.

Effective Date: March 5, 2012.''

EPA further notes that the proposed action notice which Maryland provided, dated December 2, 2011, specifies Maryland's proposed updates to the NESHAP source and NSPS source definitions.

Maryland states in the proposed action notice that it is proposing to revise Regulation .01 under COMAR 26.11.01—General Administrative Provisions, as follows:

''.01 Definitions

A. (text unchanged)

B. Terms Defined

(1)–(20–1) (text unchanged)

(21) — 'National Emission Standards for Hazardous Air Pollutants source (NESHAP source)' means any:

(a) Source of asbestos, beryllium, mercury, vinyl chloride, benzene, or inorganic arsenic which is subject to the provisions of 40 CFR Part 61 (excluding Subparts B, H, I, K, Q, R, T, and W), as amended; or

(b) [One of the sources listed in § D of this regulation] [2] Source which is subject to the provisions of 40 CFR Part 63, as amended.

(22) Reserved

(23) 'New Source Performance Standard source (NSPS source)' [(see § C of this regulation)] means any source which is subject to 40 CFR part 60, as amended.

(24)–(53) (text unchanged)

[C.]–[D.] (proposed for repeal)''

The notice also proposes a change to a reference in COMAR to the NSPS definition. That reference is found at Regulation .12 under COMAR 26.11.06—General Emission Standards, Prohibitions, and Restrictions. Maryland proposed this change in the citation because Maryland had also proposed to change the COMAR identification of the NSPS source definition to identify it as definition number 23.

In response to your submittal, EPA acknowledges that Maryland now has the delegated authority to implement and enforce the current and future NESHAP as found in 40 CFR part 63, and the current and future NSPS found in 40 CFR part 60, except for those standards which EPA explicitly excluded from its delegations to Maryland in EPA's initial delegation actions, as discussed below. EPA also acknowledges that Maryland has the delegated authority to implement and enforce any future amendments to delegated standards. EPA would also like to note that Maryland continues to be delegated the authority to implement and enforce the NESHAP standards at 40 CFR part 61, in accordance with EPA's previous delegation action related to these standards, except for those subparts in 40 CFR part 61 which Maryland has not adopted by reference as Maryland indicates by its exclusion of them in its definition of NESHAP source.

Please note that when EPA initially delegated to Maryland the authority to implement and enforce various NESHAP and NSPS, EPA specified various standards or provisions that it

[1] EPA has posted copies of these delegation actions at: *http://www.epa.gov/reg3artd/airregulations/delegate/mddelegation.htm.*

[2] Maryland uses brackets to indicate text to be deleted.

was specifically excluding from its designation, including any standards under 40 CFR part 63 that control radionuclides, or any provisions pertaining to an accidental release prevention program. These exclusions remain in effect. EPA also specified various requirements, limitations and restrictions. All of these remain in effect.

Please also note that on December 19, 2008, in *Sierra Club* v. *EPA*,[3] the United States Court of Appeals for the District of Columbia Circuit vacated certain provisions of the General Provisions of 40 CFR Part 63 relating to exemptions for startup, shutdown, and malfunction (SSM). On October 16, 2009, the Court issued a mandate vacating these SSM exemption provisions, which are found at 40 CFR § 63.6(f)(1) and (h)(1).

Accordingly, EPA no longer allows sources the SSM exemption as provided for in the vacated provisions at 40 CFR § 63.6(f)(1) and (h)(1), even though EPA has not yet formally removed these SSM exemption provisions from the General Provisions of 40 CFR Part 63. Because Maryland incorporated 40 CFR Part 63 by reference, Maryland should also no longer allow sources to use the former SSM exemption from the General Provisions of 40 CFR Part 63 due to the Court's ruling in *Sierra Club* v. *EPA*.

EPA appreciates Maryland's continuing NESHAP and NSPS enforcement efforts, and also Maryland's decision to take automatic delegation of all current and future NESHAP and NSPS by adopting them by reference.

Sincerely,
Diana Esher,
Director Air Protection Division''

This notice acknowledges the update of Maryland's delegation of authority to implement and enforce NESHAP and NSPS.

Dated: June 3, 2012.

Diana Esher,

Director, Air Protection Division, Region III.

[FR Doc. 2012–15018 Filed 6–19–12; 8:45 am]

BILLING CODE 6560–50–P

[3] *Sierra Club* v. *EPA*, 551 F.3rd 1019 (D.C. Cir. 2008).

EXPORT–IMPORT BANK OF THE U.S.

[Public Notice 2012–0111]

Agency Information Collection Activities: Final Collection; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB Review and Comments Request.

Form Title: EIB 94–07 Exporters Certificate for Use with a Short Term Export Credit Insurance Policy.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

Ex-Im Bank's financial institution policy holders provide this form to U.S. exporters, who certify to the eligibility of their exports for Ex-Im Bank support. The completed forms are held by the financial institution policy holders, only to be submitted to Ex-Im Bank in the event of a claim filing. A requirement of Ex-Im Bank's policies is that the insured financial institution policy holder obtains a completed Exporter's Certificate at the time it provides financing for an export.

This form will enable Ex-Im Bank to identify the specific details of the export transaction. These details are necessary for determining the eligibility of claims for approval. Ex-Im Bank staff and contractors review this information to assist in determining that an export transaction, on which a claim for non-payment has been submitted, meets all of the terms and conditions of the insurance coverage.

The Exporters Certificate for Use with a Short Term Export Credit Insurance Policy is a requirement of Ex-Im Bank's policies. The form can be viewed at *www.exim.gov/pub/pending/eib94–07.pdf*

DATES: Comments should be received on or before July 20, 2012 to be assured of consideration.

ADDRESSES: Comments maybe submitted electronically on *www.regulations.gov* or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20038 Attn: OMB 3048–0041.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 94–07 Exporters Certificate for Use with a Short Term Export Credit Insurance Policy.

OMB Number: 3048–xxx.

Type of Review: Regular.

Need and Use: Ex-Im Bank developed the referenced form to obtain exporter certification regarding the export transaction, U.S. content, non-military use, non-nuclear use, compliance with Ex-Im Bank's country cover policy, and their eligibility to participate in USG programs. These details are necessary to determine the legitimacy of claims submitted. It also provides the financial institution policy holder a check on the export transaction's eligibility, at the time it is fulfilling a financing request.

Affected Public: This form affects entities involved in the export of U.S goods and services.

Annual Number of Respondents: 2,500.

Estimated Time per Respondent: 10 minutes.

Number of forms reviewed by Ex-Im Bank: 23.

Note Ex-Im Bank only reviews this form when a claim is submitted. In Fiscal Year 2011, 23 claims were filed.

Government Annual Burden Hours: 2 hours.

Government Cost: $77.44.

Frequency of Reporting or Use: As needed.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2012–14997 Filed 6–19–12; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3502–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimates; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 20, 2012. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* < *mailto:Nicholas_A._Fraser@omb.eop.gov*> and to Judith B. Herman, Federal Communications Commission, via the Internet at *judith-b.herman@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, FCC, at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1169.

Title: Part 11—Emergency Alert System (EAS), Fifth Report and Order, FCC 12–7.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 10 respondents; 20 responses.

Estimated Time per Response: 20 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Obligation to Respond: Voluntary. Statutory authority for this information collection is contained in 47 U.S.C. 154(i) and 606 of the Communications Act of 1934, as amended.

Total Annual Burden: 400 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this comment period in order to obtain approval from them for the full three year clearance period.

Part 11 contains rules and regulations addressing the nation's Emergency Alert System (EAS). The EAS provides the President with the capability to provide immediate communications and information to the general public at the national, state and local area level during periods of national emergency. The EAS also provides state and local governments and the National Weather Service with the capability to provide immediate communications and information to the general public concerning emergency situations posting a threat to life and property.

For this new collection, the Commission is requesting emergency OMB review and processing for the reporting and recordkeeping requirements in the *Fifth Report and Order,* FCC 12–7. The Commission amended its Part 11 rules governing the EAS to more fully codify the existing obligation to process Common Alerting Protocol (CAP)-formatted alert messages adopted in the *Second Report and Order.*

Certification procedures for meeting general certification requirements are under 47 CFR 11.34. Paragraphs 164–167, 107–171, and 175–176 in the *Fifth Report and Order,* establish that integrated CAP-capable EAS devices and intermediate devices that are used in tandem with legacy EAS equipment are subject to the Commission's existing device certification requirements set forth in the Commission's Part 2 equipment authorization rules. These paragraphs also establish specific procedures by which EAS device manufacturers can update existing device certifications and obtain new certifications, which generally involve the submission of test data and other materials to the FCC.

The information collected by the Commission is used to confirm that EAS devices comply with the technical and performance requirements set forth in the EAS rules and other applicable rules maintained by the Commission. These rules are designed to minimize electrical radiofrequency interference and to ensure that the EAS, including individual devices within the EAS, operate at intended.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–14946 Filed 6–19–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 20, 2012. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov and* to Judith B.Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0979.

Title: License Audit Letter.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit entities, not-for-profit institutions and state, local or tribal government.

Number of Respondents: 25,000 respondents; 25,000 responses.

Estimated Time per Response: .5 hours.

Frequency of Response: One time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 152, 154(i), 155(c), 157, 201, 202, 208, 214, 301, 302a, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 331, 332, 333, 336, 534 and 535.

Total Annual Burden: 12,500 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: Yes. Records of the Wireless Radio Services may include information about individuals or households, and the use(s) and disclosure of this information is governed by the requirements of a system of records, FCC/WTB–1, ''Wireless Services Licensing Records''. However, the Commission makes all information within the Wireless Radio Services publicly available on its Universal Licensing System (ULS) Web page.

Nature and Extent of Confidentiality: Respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of their rules. Information within Wireless Radio Services is maintained in the Commission's system or records notice or 'SORN', FCC/WTB–1, ''Wireless Services Licensing Records''. These licensee records are publicly available and routinely used in accordance with subsection b of the Privacy Act of 1973, 5 U.S.C. 552a(b), as amended. Material that is afforded confidential treatment pursuant to a request made under 47 CFR 0.459 of the Commission's rules will not be available for public inspection.

The Commission has in place the following policy and procedures for records retention and disposal: Records will be actively maintained as long as the individual remains a licensee. Paper records will be archived after being keyed or scanned into the system and destroyed when 12 years old; electronic records will be backed up and deleted twelve years after the licenses are no longer valid.

Needs and Uses: The Commission is seeking OMB approval for an extension of this information collection in order to obtain their full three year approval. There is no change to the reporting requirement. There is no change to the Commission's burden estimates.

The Wireless Telecommunications Bureau (WTB) of the FCC periodically conducts audits of the construction and/or operational status of various Wireless radio stations in its licensing database that are subject to rule-based construction and operational requirements. The Commission's rules for these Wireless services require construction within a specified timeframe and require a station to remain operational in order for the license to remain valid.

The information will be used by FCC personnel to assure that licensees' stations are constructed and currently operating in accordance with the parameters of the current FCC authorization and rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–14947 Filed 6–19–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 77 FR 35680 (June 14, 2012).

DATE AND TIME: Tuesday, June 19, 2012 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting has been canceled.

CHANGES IN THE MEETING: This meeting has been canceled.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary of the Commission.

[FR Doc. 2012–15194 Filed 6–18–12; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCMENT: 77 FR 36275 (June 18, 2012).

DATE AND TIME: Thursday, June 21, 2012 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

CHANGES IN THE MEETING: The following item has been deleted from the agenda: Audit Division Recommendation Memorandum on the National Council of Farmer Cooperative Co-op/PAC (NCFC) (A11–26).

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2012–15232 Filed 6–18–12; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012176.

Title: WHS/PIL Space Charter Agreement.

Parties: Wan Hai Lines (Singapore) Pte Ltd. and Pacific International Lines (Pte) Ltd.

Filing Party: Robert B. Yoshitomi, Esq., Nixon Peabody LLP, Gas Company Tower, 555 West Fifth Street 46th Floor, Los Angeles, CA 90013.

Synopsis: The agreement authorizes Wan Hai to charter slots to PIL in the trade from California to China.

Agreement No.: 200163–004.

Title: Gulf Seaports Marine Terminal Conference.

Parties: Alabama State Docks Department, Greater Baton Rouge Port

Commission, Port of Beaumont, Brownsville Navigation District, Port Freeport, Galveston Wharves, Port of Houston Authority, Lake Charles Harbor and Terminal District, Manatee County Port Authority, Mississippi State Port Authority, Port of New Orleans, Orange County Navigation and Port District, Panama City Port Authority, Port of Pascagoula, Port of Pensacola, Plaquemines Port, Port of Port Arthur, St. Bernard Port, South Louisiana Port Commission, and Tampa Port Authority.

Filing Party: Allen Moeller, Chairman; Gulf Seaports Marine Terminal Conference; 3033 Pascagoula St., P.O. Box 70; Pascagoula, MS 39568–0070.

Synopsis: The amendment reflects the Port of Corpus Christi's termination of membership from the agreement.

By Order of the Federal Maritime Commission.

Dated: June 15, 2012.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–15060 Filed 6–19–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 40901 of the Shipping Act of 1984 (46 U.S.C. 40101) effective on the corresponding date shown below:

License Number: 2958F.
Name: Elite International Transportation, Inc.
Address: 15333 JFK Blvd., 6th Floor, Houston, TX 77032.
Date Revoked: May 9, 2012.
Reason: Failed to maintain a valid bond.

License Number: 004670F.
Name: The Pelixan Group, Inc.
Address: 72 Pinecrest Drive, Miami Springs, FL 33166.
Date Revoked: May 19, 2012.
Reason: Failed to maintain a valid bond.

License Number: 11057NF.
Name: EMO Trans, Texas, Inc.
Address: 2928 B Greens Road, Suite 350.
Date Revoked: April 17, 2012.
Reason: Voluntarily surrendered license.

License Number: 016633F.
Name: Uniship, Inc.
Address: 320 Pine Avenue, Suite 400, Long Beach, CA 90802.
Date Revoked: May 12, 2012.
Reason: Failed to maintain a valid bond.

License Number: 020397N.
Name: F.I.D. International, Inc.
Address: 5150 NW 109th Avenue, Sunrise, FL 33351.
Date Revoked: April 8, 2012.
Reason: Failed to maintain a valid bond.

License Number: 021899NF.
Name: Trans World Logistics Corporation.
Address: 702 Penny Lane, Plainfield, IN 46168.
Date Revoked: May 19, 2012.
Reason: Failed to maintain a valid bond.

License Number: 022238F.
Name: Grimes Supply Chain Services, Inc.
Address: 600 North Ellis Road, Jacksonville, FL 32254.
Date Revoked: May 16, 2012.
Reason: Failed to maintain a valid bond.

Vern W. Hill,

Director, Bureau of Certification and Licensing.

[FR Doc. 2012–15050 Filed 6–19–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 40901 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov.*

ACM Enterprises Group, Inc. (NVO), 2751 E. El Presidio Street, Unit 100, Carson, CA 90810, Officer: Edgar Karoyan, President/Sec/Treasurer/Vice President (Qualifying Individual), Application Type: New NVO License.

Amerifreight (N.A.), Inc. dba Freight Team (NVO & OFF), 218 Machlin Ct., Walnut, CA 91789, Officer: Lionel Bao, President/CEO/Secretary/CFO (Qualifying Individual), Application Type: Trade Name Change.

Aqua Gulf Transport, Inc. (NVO & OFF), 1301 W. Newport Center Drive, Deerfield Beach, FL 33442, Officer: Robert J. Browne, Chairman/CEO (Qualifying Individual), Application Type: License Transfer.

Bayanihan Cargo International Inc. (NVO), 925 Linden Avenue, Unit #D, South San Francisco, CA 94080, Officers: Manuel A. Espinosa, President (Qualifying Individual), Amparo A. Espinosa, Vice President, Application Type: New NVO License.

COM TEC LLC (NVO & OFF), 327 College St., #200, Woodland, CA 95695, Officer: Nasrullah Chaudhry, Member/Manager (Qualifying Individual), Application Type: Add NVO Service.

Daudry Business Group (NVO & OFF), 5463 NW 72nd Avenue, Miami, FL 33166, Officers: Darcy Perez, President/Secretary (Qualifying Individual), Audry Navarro, Vice President/Treasurer, Application Type: New NVO & OFF License.

DTS Advance LLC dba Triple Eagle Logistic Canada (NVO & OFF), 38850 Taylor Parkway, North Ridgeville, OH 44039, Officers: Donald B. Hackney, Vice President (Operations) (Qualifying Individual), Depeng Tong, Executive Director, Application Type: Trade Name Change.

Express Line International Corp. (NVO & OFF), 223 Lawrence Avenue, South San Francisco, CA 94080, Officers: Paul Kong, President (Qualifying Individual), Margaret Kong, CFO/Secretary, Application Type: New NVO & OFF License.

FSG Logistics (USA), Inc. dba FSG Logistics, Inc. (NVO & OFF), 27013 Pacific Highway South, PMB386, Des Moines, WA 98198, Officer: Mark L. Pederson, President/Treasurer/Secretary (Qualifying Individual), Application Type: New NVO & OFF License.

Global Synergy Logistics, Inc. (NVO & OFF), 69 Oakdale Road, Roslyn Heights, NY 11577, Officer: Yuk L. Cheung, President/Secretary/Treasurer (Qualifying Individual), Application Type: New NVO & OFF License.

Hyundai Logistics (USA), Inc. (NVO & OFF), 14251 E. Firestone Blvd., La Mirada, CA 90638, Officers: Jae S. Kim, Vice President (Qualifying Individual), Tae Soo Kim, President/CEO/Sec/Treasurer/CFO, Application Type: New NVO & OFF License.

Jenny Freight Forwarding, LLC (NVO & OFF), 11447 S. 45th Court, Phoenix, AZ 85044, Officers: Shu-Hsia J. Fogle, Member (Qualifying Individual), Steven E. Fogle, Member, Application Type: New NVO & OFF License.

Ocean Trade Lines, Inc. (NVO), 500 E. Broward Blvd., #1710, Ft. Lauderdale, FL 33394, Officer: Roy Ezra, President/Secretary (Qualifying Individual), Application Type: Name Change.

PLS Air & Shipping, Inc. (NVO), 26939 Springcreek Road, Rancho Palos Verdes, CA 90275, Officers: Jinyoung Bae, President/VP/Chief Financial Officer (Qualifying Individual), Jaijoon Lee, Secretary, Application Type: New NVO License.

Prime Van Lines, Inc. (NVO & OFF), 297 Getty Avenue, Paterson, NJ 07503, Officers: Mike Diana, Secretary (Qualifying Individual), Betty Bendavid, President, Application Type: QI Change.

Spectrum Trucking Co., Inc. dba Spectrum Logistics (NVO & OFF), 10550 Deerwood Park Blvd., #509, Jacksonville, FL 32256, Officers: Ronald M. Doyle, Vice President, Melanie R. McCoy, Secretary (Qualifying Individuals), Application Type: QI Change.

Solivan Racing Logistics Inc. (OFF), Parque Ind Otero 122–124, Carolina, PR 00985, Officers: Andres E. Solivan, President (Qualifying Individual), Daysde M. Estremera, Secretary/Vice President, Application Type: New OFF License.

Sun US Transport Corp. (NVO & OFF), 6449 Whittier Blvd., Los Angeles, CA 90022, Officer: Pete Pang, President/CEO/Secretary/CFO/Director (Qualifying Individual), Application Type: Add NVO Service.

Taiwan Express (USA), Inc. (NVO & OFF), 409 N. Oak Street, Inglewood, CA 90302, Officers: Sean H. Wu, Secretary (Qualifying Individual), Benison H. Hsu, President/CEO, Application Type: New NVO & OFF License.

Trinity Logistics USA, Inc. (NVO), 10 E. Merrick Road, Suite 304, Valley Stream, NY 11580, Officers: Gary L. Pippin, Vice President (Qualifying Individual), David Pereira, President/Secretary/Treasurer, Application Type: QI Change.

Triple ''B'' Forwarders, Inc. (NVO & OFF), 1511 Glenn Curtiss Street, Carson, CA 90746, Officers: Richard Beliveau, President (Qualifying Individual), Connie Ladin, Secretary, Application Type: Name Change.

United Cargo Services, Inc. (NVO), 44075 Pipeline Plaza, Suite 300, Ashburn, VA 20147, Officers: Sadek Toufeily, President/General Manager/Director (Qualifying Individual), Ghassan Sakallah, Director/Vice President, Application Type: License Transfer.

Dated: June 15, 2012.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–15062 Filed 6–19–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 40901 of the Shipping Act of 1984 (46 U.S.C. 40101).

License No.	Name/address	Date reissued
004661F	Jacob Fleishman Transportation, Inc., 1177 NW 81st Street, Miami, FL 33150	April 25, 2012.
016671F	Lee Ann Tyus dba Lee, Ann Tyus Maritime Services, 9648 Bailey Road, Cornelius, NC 28031	May 2, 2012.
020376NF	Unity Container Line, Inc., 6105 NW 18th Street, Bldg. 716–C, Suite 402, Miami, FL 33126	April 28, 2012.
022844F	World Freight Solutions Inc., 691 Dekle Street, Mobile, AL 36602	May 2, 2012.

Vern W. Hill,

Director, Bureau of Certification and Licensing.

[FR Doc. 2012–15053 Filed 6–19–12; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier 4040–0003; 60-day Notice]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, email your request, including your address, phone number, OMB number, and OS document identifier, to *ed.calimag@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above email address within 60-days.

Proposed Project

SF–424 Short Form, SF–424 Project Abstract Form, SF–424 Key Contacts Form—OMB No. 4040–0003.

Office: Grants.gov.

Abstract

The SF–424 (Short) provides the Federal grant-making agencies a simplified alternative to the Standard Form 424 data set and form. Agencies may use the SF–424 (Short) for grant programs not required to collect all the data that is required on the SF–424 core data set and form.

This information collection request includes two SF–424 supplemental forms, the Key Contacts form and the Project Abstract form. The Key Contacts form is an optional form that the agencies may include in the application package to collect additional key contact or point of contact information. The Project Abstract form is also an optional form that provides the mechanism for the applicant to attach a file that contains an abstract of the project, in a format specified by the agency.

Federal agencies will not be required to use the forms or to collect all of the information included on the proposed forms. The agency will identify the forms and the form sections that must be completed by applicants through instructions that will accompany the forms. Agencies will implement

processes for reviewing the applications and awarding grant funds. These processes are reflected in agencies' policies and procedures documents. Agencies will also maintain and store application forms and data in accordance with their policies and practices.

The 4040–0003 collection expired on November 30, 2011. The Grants.gov Program Management Office requests a reinstatement without change.

ESTIMATED ANNUALIZED BURDEN TABLE

Form	Type of respondent	Number of annual respondents	Number of responses per respondent	Average burden on respondent per response in hours	Total burden hours
SF–424 Short, Project Abstract, and Key Contacts Forms (4040–0003).	Grant Applicant	13,615	1	1	13,615
Total		13,615	1	1	13,615

Keith A. Tucker,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2012–15028 Filed 6–19–12; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0279; 30-day Notice]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, email your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

Proposed Project: Institutional Review Board Form—Extension—OMB No. 0990–0279—Office for Human Research Protections

Abstract: The Office for Human Research Protections (OHRP) and the Food and Drug Administration (FDA) are requesting a three-year extension of the OMB No. 0990–0279, Institutional Review Board (IRB) Registration Form. This form was modified in 2009 to be consistent with IRB registration requirements that were adopted in July 2009 by OHRP and FDA, respectively. Respondents for this information collection are institutions or organizations operating IRBs designated by an institution under an assurance of compliance approved for federalwide use by OHRP under 45 CFR 46.103(a) and that review human subjects research conducted or supported by HHS, or, in the case of FDA's regulation, each IRB in the United States that reviews clinical investigations regulated by FDA under sections 505(i) or 520(g) of the Federal Food, Drug and Cosmetic Act; and each IRB in the United States that reviews clinical investigations that are intended to support applications for research or marketing permits for FDA-regulated products.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Already Registered IRBs	6,100	2	1	12,200
New IRBs	900	2	1	1,800
Total				14,000

Keith A. Tucker,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2012–15033 Filed 6–19–12; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New; 60-day Notice]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, email your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above email address within 60 days.

Proposed Project: National Survey on Health Information Exchange in Clinical Laboratories OMB No. 0090–NEW—Office of the National Coordinator for Health Information Technology.

Abstract: Currently, the Office of the National Coordinator for Health Information Technology (ONC) is soliciting comments on a new information collection activity that will collect key data from a relatively small sample of clinical laboratories nationwide for the Evaluation of the State Health Information Exchange Cooperative Agreement Program. A key goal of the State Health Information Exchange Cooperative Agreement Program is to promote the electronic exchange of structured test results from clinical laboratories to healthcare providers. To assess progress over time at both the national and state level, information is needed regarding the baseline capacity for clinical laboratory information exchange.

The *National Survey on Health Information Exchange in Clinical Laboratories* will assess and evaluate the electronic transfer of health information from clinical laboratories to ordering physicians. It will focus on two key measures: (1) Percentage of laboratory facilities that are able to send structured lab results electronically to ordering physicians and (2) Percentage of lab results that are currently begin sent electronically in coded format to ordering physicians.

The anticipated bi-annual data collection effort will be conducted in two waves—Wave I in November of 2012 will establish the baseline and Wave II in 2014 will measure progress. Information will be collected using a mail-out/mail-back hard copy questionnaire with telephone non-response follow up. There will be two similar versions of the questionnaire—one for hospital-based labs and one for independent labs. For hospitals, the burden hours are based on an estimated length of approximately 20 minutes per completed survey. ONC will use these survey findings to develop a comprehensive understanding of the baseline level of laboratory information exchange in order to inform program activities to promote laboratory information exchange and provide more targeted assistance to states and territories in developing their laboratory information exchange strategies.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden (in hours) per response	Total burden hours
Hospital-Based Laboratory Survey on Health Information Exchange.	Hospital-Based Laboratories	2,882	1	20/60	961
Independent Laboratory Survey on Health Information Exchange.	Independent Laboratories	2,081	1	17.57/60	609
Total	.....	4,963	1	18.98/60	1,570

Keith A. Tucker,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2012–15032 Filed 6–19–12; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Synthesis of AHRQ-Funded HAI Projects.'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal**

Register on April 6th, 2012 and allowed 60 days for public comment. No substantive comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by July 20, 2012.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by email at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Synthesis of AHRQ–Funded HAI Projects

The Agency for Healthcare Research and Quality (AHRQ) requests that the Office of Management and Budget (OMB) approve, under the Paperwork Reduction Act of 1995, AHRQ's collection of information for the Synthesis of AHRQ–Funded HAI Projects.

For approximately a decade, AHRQ has conducted research on preventing healthcare-associated infections (HAIs), both internally and through contracts and grants. AHRQ's grant- and contract-supported projects have been directed at the major types of HAIs: central-line-associated bloodstream infections (CLABSI), catheter-associated urinary tract infections (CAUTI), surgical site infections (SSI), ventilator-associated pneumonia (VAP), methicillin-resistant Staphylococcus aureus (MRSA), and Clostridium difficile (C. diff.). Projects have addressed the problem of HAIs in diverse healthcare settings, including hospitals, ambulatory settings (ambulatory surgery centers, end-stage renal disease facilities, and outpatient clinics and offices), and long-term care facilities. AHRQ's portfolio of HAI projects has emphasized a combination of research and implementation initiatives. In the latter category, a major focus of AHRQ's efforts has been to deploy tools that can improve provider performance and reduce HAIs. Based on the earlier success of the Michigan Keystone project, AHRQ has funded projects to implement the Comprehensive Unit-based Safety Program (CUSP) to address CLABSI and CAUTI nationwide. Data are now emerging that demonstrate the success of CUSP in reducing CLABSI in hospitals across the nation.

Between 2007 and 2010, AHRQ funded 40 contracts and 18 grants focusing on expanding the HAI knowledge base and implementing HAI prevention strategies. Today it is necessary to look across these projects in order to (1) identify, document, and synthesize their findings and results to ensure that AHRQ, healthcare professionals, and the public can make best use of these findings and (2) identify remaining gaps in the HAI science base to enable AHRQ to fund future studies that will address these needs. The synthesis will draw on several data sources, including interviews with project leaders. In addition to learning about studies that have not published peer-reviewed manuscripts, the interviews will enable the project team to delve into project details that are not typically available in publications, such as the project leader's motivation for responding to the request for proposal, challenges faced in implementing the project, changes in the project's delivery schedule or work plan, experts' views on how HAI prevention evidence generated by a specific project fits into the HAI research agenda more broadly, and remaining gaps in the HAI knowledge base.

AHRQ has contracted with IMPAQ International, LLC, to develop this synthesis, identify gaps, and promote the widespread application of successful HAI prevention approaches. This research has the following goals: (1) Identify and document findings and synthesize results of AHRQ-funded HAI projects; (2) Disseminate key findings from the HAI projects; and (3) Identify remaining gaps in the HAI knowledge base.

This study is being conducted by AHRQ through its contractor, IMPAQ International, LLC and its subcontractor, the RAND Corporation, pursuant to AHRQ's statutory authority to conduct and support research and disseminate information on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

To achieve the goals of this project the following data collection will be implemented:

(1) Interviews with contractors—Interviews will be conducted with the project leaders (project directors or project managers) from 40 HAI contractors. The purpose of these interviews is to identify (a) key findings, (b) gaps in knowledge base, (c) lessons learned, (d) effective approaches for preventing and reducing HAIs, and (e) opportunities for additional projects focused on generating and implementing knowledge on preventing HAIs.

(2) Interviews with grantees—Interviews will be conducted with the project leaders (principal investigators) from 18 HAI grantees. Similar to the interviews with contractors, the purpose of these interviews is to identify (a) key findings, (b) gaps in knowledge base, (c) lessons learned, (d) effective approaches for preventing and reducing HAIs, and (e) opportunities for additional projects focused on generating and implementing knowledge on preventing HAIs. While the goals of the interviews with contractors and grantees are similar, the two audiences require separate interview protocols because their funding mechanisms and project structures differ. For example, contracts have more structured deliverable schedules than do grants and grants are more likely than contracts to be on investigator-initiated topics.

AHRQ will interview key project leaders to learn about the processes and methods used, results achieved, and lessons learned under the AHRQ-funded HAI contracts and grants. This information will enable AHRQ to identify effective approaches for preventing and reducing HAIs and for promoting the widespread application of these approaches. Finally, collecting data from these audiences will allow AHRQ to detect gaps in the HAI science base and identify opportunities for additional projects focused on generating and implementing knowledge on preventing HAIs.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondent's time to participate in this evaluation. Interviews will be conducted with 40 contractors and 18 grantees and each will last about 90 minutes. The total burden hours are estimated to be 87.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Data collection activity	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Interviews with contractors	40	1	1.5	60
Interviews with grantees	18	1	1.5	27
Total	58	[1]	[1]	87

[1] Not applicable.

The respondents are the project leaders, that is, project directors for the contracts and principal investigators for the grants. Based on the type of grant and the project leaders' qualifications, the project leaders were categorized into three labor categories: Social Scientists and Related Workers; Epidemiologists; and Medical Scientists. For example, one project director conducting a randomized controlled trial is a physician and was categorized into the Medical Scientist labor category. Other project leaders have advanced degrees in the social sciences (*e.g.,* gerontology) or epidemiology and were included in the Social Scientist or Epidemiologist labor categories, as appropriate.

Exhibit 2 shows the estimated annualized cost burden associated with the respondent's time to participate in the evaluation. The total cost burden is estimated to be $3,450.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Data collection activity	Number of respondents	Total burden hours	Average hourly wage rate [1]	Total cost burden
Interviews with contractors	40	60	$39.66	$2,380
Interviews with grantees	18	27	39.66	1,070
Total	58	87	[2]	3,450

[1] Based upon the weighted average of the mean wages for 19–3099 Social Scientists and Related Workers, All Other ($37.45 per hour; n=17), 19–1041 Epidemiologists ($32.83; n=5) and 19–1042 Medical Scientists ($41.69; n=36), National Compensation Survey: Occupational Wages in the United States May 2010, U.S. Department of Labor, Bureau of Labor Statistics.
[2] Not applicable.

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the estimated total and annualized cost to the government for conducting the evaluation. The total cost is estimated to be $87,502.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost	Annualized cost
Project Development	$6,135	$2,045
Data Collection Activities	17,400	5,800
Data Processing and Analysis	29,000	9,667
Publication of Results	0	0
Project Management	5,800	1,933
Overhead	29,167	9,722
Total	87,502	29,167

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: June 7, 2012.

Carolyn M. Clancy,

Director.

[FR Doc. 2012–14980 Filed 6–19–12; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–12–12NT]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to Kimberly S. Lane, at 1600 Clifton Road, MS D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Early Hearing Detection and Intervention—Pediatric Audiology Links to Service (EHDI–PALS) Survey—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Division of Human Development and Disability, located within NCBDDD, promotes the health of babies, children, and adults, with a focus on preventing birth defects and developmental disabilities and optimizing the health outcomes of those with disabilities. Since the passage of the Early Hearing Detection and Intervention (EHDI) Act, 97% of newborn infants are now screened for hearing loss prior to hospital discharge. However, many of these infants have not received needed hearing test and follow up services after their hospital discharges. The 2009 national average loss to follow-up/loss to documentation rate is at 45%. This rate remains an area of critical concern for state EHDI programs and CDC–EHDI team's goal of timely diagnosis by 3 months of age and intervention by 6 months of age. Many states cite the lack of audiology resource as the main factor behind the high loss to follow up. To compound the problem, many pediatric audiologists may be proficient evaluating children age 5 and older but are not proficient with diagnosing infants or younger children because children age 5 and younger require a different skill set. To date, no existing literature or database is available to help states verify and quantify their states' true follow-up capacity.

EHDI–PALS is a project conceptualized by the CDC–EHDI team with input from an advisory group of external partners. EHDI–PALs workgroup has broad representation from American Speech-Language-Hearing Association (ASHA), American Academy of Audiology (AAA), Joint Committee on Infant Hearing (JCIH), National Centre for Hearing Assessment and Management (NCHAM), Directors of Speech and Hearing Programs in State Health & Welfare Agencies (DSHPSHWA), Healthcare Resources and Services Administration (HRSA), University of Maine Center for Research and Evaluation, and Hands & Voices (H&V). Meeting since April 2010, the EHDI–PALS workgroup has sought consensus on the loss to follow up/loss to documentation issue facing the EHDI programs. A survey, based on standard of care practice, was developed for state EHDI programs to quantify the pediatric audiology resource distribution within their state, particularly audiology facilities that are equipped to provide follow-up services for children age 5 and younger. The survey will also capture how often providers report diagnostic hearing test results to their state EHDI jurisdiction.

CDC is requesting OMB approval to collect audiology facility information from audiologists or facility managers over a one-year period. The survey will allow CDC–EHDI team and state EHDI programs to compile a systematic, quantifiable distribution of audiology facilities and the capacity of each facility to provide services for children age 5 and younger. The data collected will also allow the CDC–EHDI team to analyze facility distribution data to improve technical assistance to State EHDI programs.

Respondents will all be audiologists who manage a facility or provide audiologic care for children age 5 and younger. Based on calculations from ASHA's biannual membership survey (available in ASHA.org), we estimate approximately 1,000 audiologists will respond to the survey. To minimize burden and improve convenience, the survey will be available via a secure password protected Web site. Placing the survey on the Internet ensures convenient, on-demand access by the audiologists. Financial cost is minimized because no mailing fee will be associated with sending or responding to this survey.

It is estimated that, potentially, 1,500 audiologists will read through the opening introduction page of the survey to decide whether or not to complete the survey. This will take 1 minute per person. It is estimated 1,000 audiologists will complete the survey, which will average 9 minutes per respondent. There are no costs to respondents other than their time.

ESTIMATES OF ANNUALIZED BURDEN HOURS

Respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in minutes)	Total burden hours
Audiologists	survey introduction	1,500	1	1/60	25
Audiologists	survey	1,000	1	9/60	150
Totals					175

Kimberly S. Lane,

Deputy Director, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–15105 Filed 6–19–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–12–12EF]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Evaluating the Effectiveness of Occupational Safety and Health Program Elements in the Wholesale Retail Trade Sector—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

For the current study, the National Institute for Occupational Safety and Health (NIOSH) and the Ohio Bureau of Workers Compensation (OBWC) will collaborate to examine the association between survey-assessed Occupational Safety and Health (OSH) program elements (organizational policies, procedures, practices) and workers compensation (WC) injury/illness outcomes. The study will be conducted using a stratified sample of OBWC-insured wholesale/retail trade (WRT) firms. Crucial OSH program elements with particularly high impact on WC losses will be identified in this study and disseminated to the WRT sector.

There are expected to be up to 4,404 participants per year. Surveys will be administered twice to the same firms in successive years (e.g. from January–December 2013 and again from January–December 2014). An individual responsible for the OSH program at each firm will be asked to complete a survey that includes a background section related to respondent and company demographics and a main section where individuals will be asked to evaluate organizational metrics related to their firm's OSH program. The firm-level survey data will be linked to five years of retrospective injury and illness WC claims data and two years of prospective injury and illness WC claims data from OBWC to determine which organizational metrics are related to firm-level injury and illness WC claim rates. A nested study will ask multiple respondents at a subset of 60 firms to participate by completing surveys. A five-minute interview will be conducted with a 10% sample of non-responders (up to 792 individuals).

In order to maximize efficiency and reduce burden, a web-based survey is proposed for the majority (95%) of survey data collection. Collected information will be used to determine whether a significant relationship exists between self-reported firm OSH elements and firm WC outcomes while controlling for covariates. Once the study is completed, benchmarking reports about OSH elements that have the highest impact on WC losses in the WRT sector will be made available through the NIOSH–OBWC internet sites and peer-reviewed publications.

In summary, this study will determine the effectiveness of OSH program elements in the WRT sector and enable evidence-based prevention practices to be shared with the greatest audience possible. NIOSH expects to complete data collection in 2014. There is no cost to respondents other than their time. The total estimated annual burden hours are 1,681.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Safety and Health Managers	Occupational Safety and Health Program Survey Year 1 and Year 2.	4,404	1	20/60
	Informed Consent Form	4,404	1	2/60
	Non-Responder Interview	792	1	5/60

Kimberly S. Lane,

Deputy Director, Office of Science Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–15106 Filed 6–19–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0568]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Experimental Study: Disease Information in Branded Promotional Material

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by July 20, 2012.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to

oira_submission@omb.eop.gov. All comments should be identified with the OMB control number 0910–new and title, ''Experimental Study: Experimental Study: Disease Information in Branded Promotional Material.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Juanmanuel Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, *juanmanuel.vilela@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Experimental Study: Disease Information in Branded Promotional Material—(OMB Control Number 0910–New)

I. Regulatory Background

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information. Section 1003(d)(2)(c) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 393(d)(2)(c)) authorizes FDA to conduct research relating to drugs and other FDA regulated products in carrying out the provisions of the FD&C Act.

FDA regulations require prescription drug advertisements to contain accurate information about the benefits and risks of the drug advertised. Generally, the advertising must not be misleading about the effectiveness of the drug. Specifically, the ad must not contain a representation or suggestion that the drug is better than has been shown by substantial evidence or useful in a broader range of patients (Ref. 1). The regulations prohibit sponsors from, for example, disseminating promotional information that may broaden the indications of medications beyond the indication for which they have been approved.

Rationale: As a public health agency, FDA encourages the communication of accurate health messages about medical conditions and treatments. One way in which broad disease information is communicated to the public is through disease awareness communications.

Disease awareness communications are communications disseminated to consumers or health care practitioners that discuss a particular disease or health condition, but do not mention any specific drug or device or make any representation or suggestion concerning a particular drug or device. Help-seeking communications are disease awareness communications directed at consumers. FDA believes that disease awareness communications can provide important health information to consumers and health care practitioners, and can encourage consumers to seek, and health care practitioners to provide, appropriate treatment. This is particularly important for under-diagnosed, under-treated health conditions, such as depression, hyperlipidemia, hypertension, osteoporosis, and diabetes. Unlike drug and device promotional labeling and prescription drug and restricted device advertising, disease awareness communications are not subject to the requirements of the Federal Food, Drug, and Cosmetic Act (the act) and FDA regulations.''(Ref. 2)

Some research has shown that disease awareness advertising is viewed by consumers as more informative and containing less persuasive intent than full product advertising (Ref. 3).

Sponsors may choose to include disease information in their full product promotions. Such information is designed to educate the patient about his or her disease condition. However, in some cases a full description of the medical condition may include information about specific health outcomes that are not part of a drug's approved indication. The current project is designed to determine if providing such information in branded full product advertisements affects perceptions of the product.

When broad disease information accompanies or is included in an ad for a specific drug, consumers may mistakenly assume that the drug will address all of the potential consequences of the condition mentioned in the ad by making inferences that go beyond what is explicitly stated in an advertisement (Ref. 4). For example, the mention of diabetic retinopathy in an advertisement for a drug that lowers blood glucose may lead consumers to infer that the drug will prevent diabetic retinopathy, even if no direct claim is made. The advertisement may imply broader indications for the promoted drug than are warranted, leading consumers to infer effectiveness of the drug beyond the indication for which it was approved. If consumers are able to distinguish between disease information and product claims in an ad, then they will not be misled by the inclusion of disease information in a branded ad. If consumers are unable to distinguish these two, however, then consumers may be misled into believing that a particular drug is effective against long-term consequences. The current study will explore perceptions that result from including both disease information and promotional information about a specific drug in the same advertising piece.

Design Overview: We will investigate the effects of adding disease outcome information to branded promotional materials on consumer perceptions and understanding. This information will be examined in the context of direct-to-consumer prescription drug print advertisements. We hope to more readily generalize our findings by exploring the issues raised in this document in three medical conditions varying in severity and symptomatology: Chronic obstructive pulmonary disease (COPD), lymphoma, and anemia.

We plan to examine two variables in this study: the type of disease information (possible disease outcomes, versus non-outcome information, versus no information) and the format of the information (integrated with drug information versus separated). Some participants will see information about the disease that avoids discussion of disease outcomes the drug has not been shown to address, such as, ''Diabetes is a disease in which blood sugar can vary uncontrollably, leading to uncomfortable episodes of high or low blood sugar.'' Other participants will see disease information that mentions consequences of the disease that go beyond the indication of the advertised product, such as, ''Untreated diabetes can lead to blindness, amputation, and, in some cases, death.'' A third group will see drug product information only (no disease information). We will also examine the way in which the disease information is presented relative to the product claims in the piece by varying the format: Disease information mixed (integrated) with product claims versus disease information apart (separated) from product claims. We are exploring a number of different options for implementing these two variables. For example: alternating paragraphs of product and disease information, disease information on one page and product information on another page, use of different colors and fonts for disease and product information, and different visuals for disease and product information. Final format variations will be determined through pretesting. The pretests are designed only to make sure the particulars of the main study are implemented in the best way possible. The results of the pretests will not increase the burden on respondents in the main study, nor will the main study design change as a result of the pretests.

This study utilizes random assignment to conditions. Within

medical condition, participants will be randomly assigned to see one version of the ad. Participants will be recruited from a general population sample to control for prior knowledge about disease outcomes.

The design is described in Table 1:

TABLE 1—STUDY DESIGN

Medical condition	Disease information plus	Format of disease and product information		
		Integrated	Separated	Control (no disease info)
COPD	Non-outcome			
	Outcomes			
Lymphoma	Non-outcome			
	Outcomes			
Anemia	Non-outcome			
	Outcomes			

Data will be collected using an Internet protocol. Participants will be recruited from a general population sample to control for prior knowledge about disease outcomes. Because the task presumes basic reading abilities, all selected participants must speak and read English fluently. Participants must be 18 years or older. We will use ANOVAs and regressions to test hypotheses. Interviews are expected to last no more than 20 minutes. A total of 4,650 participants will be involved in the study. This will be a one-time (rather than annual) collection of information.

In the **Federal Register** of August 16, 2011 (76 FR 50737), FDA published a 60-day notice for public comment on the proposed collection of information. FDA received one public submission. In the following section, we outline the observations and suggestions raised in the submission and provide our responses.

(Comment 1) One statement suggested we add a multiple choice question to obtain a baseline of how consumers research information about their disease in other forms and if they are actively engaged in health care decisions.

(Response) We agree this question is interesting, but feel it is outside the scope of the current study. The purpose of the study is to examine how disease outcome and product information contained within the same piece influences perceptions of product benefit.

(Comment 2) One comment stated that the inclusion of the MedWatch reporting statement discloses the prescription status of the product and suggested rewording the question about the type of product being tested.

(Response) We have reworded the question, removing the choice options ''household cleaner'' and ''herbal supplement'' and added a ''don't know'' option.

(Comment 3) Two statements said that open-ended questions would result in subjective data interpretation and suggested either replacing them with closed-ended questions or deleting. These statements also suggested that procedures for coding, categorizing and analyzing verbatim responses be established in advance, and that comparable questions about both benefits and risks be included.

(Response) We have established baseline codes for the open-ended questions and included parallel questions to assess perceptions of benefits and risks (see draft questionnaire). Other codes will be established through pretesting. We will have two independent raters for coding and we will calculate inter-rater reliability. Disagreements between coders will be resolved through discussion. In addition, our open-ended questions are accompanied by closed-ended questions.

(Comment 4) One comment stated that those previously diagnosed with the medical condition may respond differently than the newly diagnosed.

(Response) We agree that length of diagnosis could impact responses to information. We are recruiting a general population sample and plan to use medical condition as a covariate. We have added a question to assess time since diagnosis among those who self-identify as having the condition of interest.

(Comment 5) The submission suggested deleting items: (1) Attitudes about the product; (2) multiple items measuring the same construct (risk, benefit); and (3) perceptions of the risk/benefit tradeoff.

(Response) We have addressed these suggestions in the following ways. We have deleted the questions measuring product attitudes. We believe that two questions measuring risk and benefits are necessary to assess the reliability (Ref. 5) of each construct and so have kept both questions. With regard to the final point, we agree that the risk/benefit ratio is different for each patient, but we also think that the perceived risk/benefit ratio for a product is influenced by the information presented in the ad. It is relevant here in that the risk/benefit assessment may be influenced by the perception that the disease outcome information is a product characteristic.

(Comment 6) One statement suggested deleting the questions related to behavioral intention, while another statement suggested expanding these questions.

(Response) As these statements are contradictory, we offer our reasoning behind including these questions. In an ideal situation, we would be able to measure actual behaviors that may result from exposure to a particular promotional campaign. Because we cannot do that, we propose to measure participants' intended behavior; that is, the likelihood that they would engage in specific outcome behaviors that may occur as a result of exposure to the product and disease information. This is in concordance with the recommendations of the November 17, 2011, meeting of the Risk Communication Advisory Committee, which suggested behavioral intention as an important variable to measure in research studies on promotion.

(Comment 7) One comment stated that the questions assessing recall included false benefit items but were not balanced with statements to recall true/factual disease awareness information and suggested including true statements from the disease awareness information.

(Response) Our use of the term ''false benefit'' in the questionnaire notes may have caused confusion. In the draft questionnaire, ''false benefit'' simply refers to disease characteristics that are not part of the product's indication. The purpose of this question is to first

determine which, if any, of the outcome claims are being interpreted by the participant as product benefits. Following this question is an open-ended question intended to measure what it was about the ad that suggested that (see questionnaire). We have revised the questionnaire notes to read ''outcome'' and ''non-outcome'' for clarity.

(Comment 8) One statement asked for more detail about the study design and stimuli layout and offered specific suggestions on variables to include in the study: Vary the presentation of the disease information using headers with and without disclaimers, use a control test ad with no headers, use branded colors, non-branded colors, etc. to maximize understanding of whether consumers are able to distinguish between disease information and product claims and whether the format enhances understanding.

(Response) We have included a description of the study design in both the 60-day and 30-day **Federal Register** notices. We are exploring a number of different options for implementing the layout of the stimuli. For example: Alternating paragraphs of product and disease information, disease information on one page and product information on another page, use of identical or different colors and fonts for disease and product information, and different visuals for disease and product information. Final format variations will be determined through pretesting. This is the first study of this issue and therefore we are focusing on a small number of variations. It is not feasible to include every possible variation. We appreciate the layout suggestions provided.

(Comment 9) One statement addressed the recruitment process, requesting that we disclose how participants will be recruited and recommending mall intercept recruitment because recruiting participants online may not be reflective of the consumer likely to observe print advertising.

(Response) We plan to recruit and conduct the study online to use our resources most efficiently.

(Comment 10) One statement asked for a rationale for our sample size.

(Response) We have provided a rationale for our sample size in the Power Analysis.

(Comment 11) One statement requested details on the assignment to conditions, saying it was unclear if the study will include a sufficiently stratified sample based on language abilities, preexisting knowledge/disease awareness, age, gender, etc.

(Response) Participants will be randomly assigned to conditions. An attempt will be made to have an equal number of males and females in each experimental cell. Approximately 20 percent of participants in each cell will have a high school education or less, with a range of education and race/ethnicity represented in each condition. The following screening criteria will be employed: participants must be age 18 and over, must not work for a pharmaceutical company, an advertising agency, a market research company, or be health care professionals.

(Comment 12) One statement asked that the screener specify if only those previously diagnosed with the condition will be eligible to participate, saying those previously diagnosed with the medical condition may engage differently than those who are recently diagnosed.

(Response) We agree that those who have the medical condition may react differently than those who do not. We plan to use diagnosis as a covariate in our analyses.

The total annual estimated burden imposed by this collection of information is 1,873 hours for this one-time collection.

The response burden chart is listed in table 2.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	No. of respondents	No. of responses per respondent	Total annual responses	Average burden per response [2]	Total hours
Sample outgo (pretests and main survey)	27,679				
Number of screener completes (35%)	9,688	1	9,688	2/60	323
Number eligible (80%)	7,750				
Number of completes, Pretests (60%)	900	1	900	20/60	300
Number of completes, Study (60%)	3,750	1	3,750	20/60	1,250
Number of pretest/study completes	4,650				
Total					1,873

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Burden estimates of less than 1 hour are expressed as a fraction of an hour in the format ''[number of minutes per response]/60''.

II. References

The following references have been placed on display in the Division of Dockets Management, (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register.**)

1. See 21 CFR 202.1(e)(6): ''An advertisement for a prescription drug is false, lacking in fair balance, or otherwise misleading, or otherwise violative of section 502(n) of the act, among other reasons if it: (i) Contains a representation or suggestion, not approved or permitted for use in the labeling, that a drug is better, more effective, useful in a broader range of patients (as used in this section, *patients* means humans and in the case of veterinary drugs, other animals), safer, has fewer, or less incidence of, or less serious side effects or contraindications than has been demonstrated by substantial evidence or substantial clinical experience (as described in paragraphs (e)(4)(ii)(b) and (c) of this section) whether or not such representations are made by comparison with other drugs or treatments * * *''

2. Draft Guidance for Industry: 'Help-Seeking' and Other Disease Awareness Communications by or on Behalf of Drug and Device Firms'' (pg. 1). Available at *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm070068.pdf.* Last accessed June 8, 2012.

3. Lee-Wingate, S. and Xie, Y. (2010). Consumer perceptions of product-claim versus help-seeking direct-to-consumer advertising. ''International Journal of Pharmaceutical and Healthcare Marketing,'' 4(3), 232–246.

4. Burke, R. R., DeSarbo, W. S., Oliver, R. L., and Robertson, T. S. (1988). Deception by implication: An experimental investigation. ''Journal of Consumer Research,'' 14(4), 483–

494; Harris, R. J. (1977) Comprehension of pragmatic implication in advertising. ''Journal of Applied Psychology,'' 62, 603–608; Jacoby, J. and Hoyer, W. (1987). ''The comprehension and miscomprehension of print communications.'' New York: The Advertising Educational Foundation.

5. Guidance for Industry: Patient Reported Outcome Measures: Use in Medical Product Development to Support Labeling Claims. Available at *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm071975.pdf*. Last accessed November 16, 2011.

6. Transcript available at *http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/RiskCommunicationAdvisoryCommittee/UCM283132.pdf*. Last accessed January 4, 2012.

Dated: June 14, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–14989 Filed 6–19–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0656]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Secure Supply Chain Pilot Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by July 20, 2012.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the title Secure Supply Chain Pilot Program. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Juanmanuel Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr. PIFO–400W, Rockville, MD 20850, (301) 796–7651.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance: ''Secure Supply Chain Pilot Program.''

The Secure Supply Chain Pilot Program (SSCPP) is intended to assist FDA in its efforts to prevent the importation of adulterated, misbranded, or unapproved drugs by allowing the Agency to focus its resources on imported drugs that fall outside the program and that may pose such risks. Such a program would increase the likelihood of expedited entry for specific finished drug products and APIs imported into the United States that meet the criteria for selection under the program.

Title: Secure Supply Chain Pilot Program.

Description of Respondents: Respondents to this collection of information are sponsors and foreign manufacturers of finished drug products and active pharmaceutical ingredients (APIs) intended for human use.

Burden Estimate: In the **Federal Register** of January 15, 2009 (74 FR 2605) (the January 2009 notice), FDA announced an opportunity for sponsors and foreign manufacturers of finished drug products and APIs intended for human use imported via a secure supply chain to apply to participate in a voluntary SSCPP to be conducted by FDA's Center for Drug Evaluation and Research (CDER) and Office of Regulatory Affairs (ORA). The goal of the SSCPP is to allow FDA to determine the practicality of developing a secure supply chain program. The information obtained from this pilot program will assist FDA in its determination. An SSCPP would assist the Agency in its efforts to prevent the importation of adulterated, misbranded, or unapproved drugs by allowing the Agency to focus its resources on imported drugs outside the program that may pose such risks. Such a program would increase the likelihood of expedited entry for specific finished drug products and APIs imported into the United States that meet the criteria for selection under the program. A limited number of applications that meet criteria established by FDA will be selected by FDA based largely on information submitted in the SSCPP application.

Because there is information collection under the PRA associated with the SSCPP, this **Federal Register** notice is being issued as part of the process for OMB approval to collect this information. After OMB approval, FDA will accept applications to participate in the program and will select qualified applications. FDA will announce in the **Federal Register** OMB's approval, the date that applications may be submitted, and application submission procedures. FDA has considered all PRA and Non-PRA comments received. This FR notice responds only to the PRA-related comments.

The information collection associated with the SSCPP consists of the following:

(1) Secure Supply Chain Pilot Program application form. Proposed Form FDA 3676 will request the following: (a) Identification and contact information for sponsors and foreign manufacturers wishing to participate in the SSCPP; (b) information about each drug to be imported; (c) logistical information associated with the importation and a description of the process by which the drug will be brought into the United States; and (d) a description of procedures that the applicant will follow to remedy any deficiencies that FDA may identify with the importation, including recall procedures. A draft of proposed Form FDA 3676 may be obtained at *http://www.fda.gov/cder/fedreg/fda-3676.pdf,* or by calling (301) 796–7651. The SSCPP application form may not be submitted to FDA until OMB has approved the information collection associated with the SSCPP.

(2) Changes to information contained in the SSCPP. If there are changes to the information contained in the SSCPP application, then the applicant would be expected to submit to FDA a modified application detailing those changes and obtain FDA authorization before implementing them.

(3) FDA withdrawal of selection. If FDA withdraws its selection of an application from participating in the SSCPP, the applicant would be given an opportunity to provide information to FDA to show that the program's criteria are met and participation should continue or be resumed. FDA will consider and act on this information at its sole discretion.

(4) Recordkeeping requirements. Applicants will be expected to maintain records that confirm the information provided in their SSCPP applications and make these records available to FDA if requested. While these records must be maintained for the duration of the applicant's participation in the program, FDA requests that they be maintained and be readily available when requested by FDA for a period of at least 3 years after the pilot ends or the

applicant's participation in the pilot ends. In addition, regardless of whether required by law, for each shipment of finished drug product or API, applicants must maintain records that document the product's movement through their secure supply chain from the point of manufacture to the point of receipt by the ultimate consignee. These records must be maintained for the duration of the applicant's participation in the program and be readily available when requested by FDA. FDA intends to accept applications from no more than 100 qualified applicants and for no more than 5 drugs per applicant to participate in the SSCPP. As indicated in Table 1 of this document, FDA estimates that no more than 500 SSCPP application forms will be submitted by approximately 100 applicants, and that it will take approximately 3.5 hours to complete and submit each application form to FDA. FDA anticipates that approximately 5 applicants will need to submit a modified SSCPP, and that each modified application will take approximately 60 minutes to complete and submit to FDA (this estimate includes the time for an applicant to also submit a copy of its Customs Trade Partnership Against Terrorism (C–TPAT) application). FDA anticipates that it will need to withdraw its selection of only one SSCPP application, and that it will take approximately 1 hour for an applicant to submit information in response. The reporting burden estimated in Table 1 also includes the time for submitting the address where records associated with the SSCPP will be kept, and for submitting the FDA-assigned qualifier code and Affirmation of Compliance code for each imported drug.

As indicated in Table 2 of this document, FDA estimates that approximately 500 records associated with the SSCPP will be kept by approximately 100 applicants, and that each record will take about 60 minutes to maintain.

Because FDA intends to continue the SSCPP for 2 years, these burden estimates are for a one-time burden over a 2-year period.

In the January 2009 notice, FDA requested public comment on the proposed collection of information. We received comments from 11 different companies that pertained to the information collection resulting from the SSCPP. A summary of the comments and FDA's response are as follows:

(1) Several comments stated that foreign manufacturers, with the exception of manufactures in Canada and Mexico, are not eligible for Customs Trade Partnership Against Terrorism (C–TPAT) program and therefore would be unable to meet the criteria in the SSCPP.

To clarify the C–TPAT program eligibility requirements, only business entities who handle cargo that enter the United States are eligible to be a member of the C–TPAT program. Foreign manufacturers, with the exception of those located in Canada and Mexico, cannot apply to be members of the C–TPAT program, but would be visited by the C–TPAT program as part of the validation process for a C–TPAT partner. C–TPAT partners must adhere to the security requirements and ensure that requirements are met by their business partners throughout the international supply chain. The January 2009 notice states that firms identified in the SSCPP application must be either C–TPAT Tier II certified or Tier II pending certification at the time the application is submitted. After further review and discussion with the U.S. Customs and Border Protection (CBP) about the C–TPAT program, FDA is revising the C–TPAT criteria to permit firms to participate in the SSCPP if the supply chain has been validated as Tier II or Tier III. Tier II validated means that CBP has visited a site in the firm's supply chain and has validated its security procedures as meeting the requirements set forth by C–TPAT. Tier III means that a firm has exceeded C–TPAT's security criteria and implemented their own best practices. FDA intends to revise the SSCPP application to reflect the change in the criteria from Tier II certified or Tier II pending to require validated as Tier II or Tier III.

(2) Several comments stated that the January 2009 notice does not contain sufficient detail to determine how FDA will identify the ultimate consignee for purposes of this pilot program, and that further clarification is needed.

The January 2009 notice specifically defines ''ultimate consignee,'' for the purposes of the SSCPP, as ''[t]he party in the United States, at the time of entry or release, to whom the overseas shipper sold the imported merchandise. If at the time of entry the imported merchandise has not been sold, then the Ultimate Consignee at the time of entry or release is defined as the party in the United States to whom the overseas shipper consigned the imported merchandise.''

(3) Several comments stated that clarification is needed regarding the data that will be required for individual shipments by program participants, the automated systems that will be used, and the modifications participants must make to those systems for imported drugs under the program.

FDA will be using the current systems for receiving and reviewing entry information. FDA will assign a unique identifier to each selected SSCPP application, and the Broker/Customs—Broker/Filer will transmit the identifier when filing entry for the product, which will enable FDA to verify the drug product as being part of the SSCPP. Otherwise, the FDA data requirements to submit a drug import entry will not change.

(4) Several comments expressed concern that the SSCPP requires the primary and secondary points of contact to respond directly to all questions posed by FDA regarding an applicant's status in the SSCPP. In addition, comments made suggest that FDA identify primary and secondary points of contact, within the Agency, with whom the applicants can raise concerns and discuss issues.

The intent in the SSCPP is to identify appropriate individuals who can obtain information to respond to Agency questions and requests for information. Those contacts can obtain assistance within the firm and then contact the Agency with the response. This will eliminate contacting multiple people potentially within several firms to obtain a response. FDA intends to identify primary and secondary points of contact within the Agency and will publish this information in a subsequent **Federal Register** notice.

(5) Several comments stated that under the Primary and Secondary contacts requirement on the SSCPP application, the term ''any concerns'' is too broad and the scope should be limited to ''concerns.'' In addition, the comments suggested that the applicant provide a corrective action plan ''if needed,'' but that this should not be a necessary requirement.

FDA will change ''any concerns'' to ''concerns'' with the understanding that the Agency will raise concerns related to the SSCPP. FDA believes a corrective action plan should be kept as a required element for participation in this program.

(6) Several comments request that prior notification be given to applicants when an audit check analysis is performed.

FDA does not agree with this position. Audits of the SSCPP will not be announced in advance and will be administered in intervals chosen by the agency.

(7) Several comments stated that the Secure Supply Chain (SSC) Affirmation of Compliance (A of C) code should be submitted in place of (and not in addition to) the A of C codes currently transmitted during entry processing.

There will be one code for products subject to the SSCPP. This will be an SSC A of C, which will be required at the time of entry and will identify the drug product as being part of the SSCPP.

(8) Several comments requested clarification as to whether multiple dosage forms of a drug covered under a single new drug application (NDA) are considered one SSCPP application.

Each individual dosage form will require a separate application for the SSCPP. One API used in multiple drug products' NDAs would require the submission of one application.

(9) Some comments requested clarification regarding the product entry process when an application, which has been modified to reflect a change in information, is under review by FDA for continued participation in the program.

The firm must notify FDA of the change before its implementation. If the firm implements the change before FDA authorizes the change, FDA will revert to the normal drug entry process for the product.

(10) Several comments requested that the SSCPP criteria for use of one port of entry be amended to allow for multiple ports of entry because of changes associated with airline landing requirements.

At this time, the Agency will not consider amending this requirement. Any deviations from the applicant's SSC distribution practices, as identified in the SSCPP application, would cause that individual shipment to be screened under general import processing procedure. Included in such deviations are changes to airline landings, which would require a different port of arrival and entry from that which is defined in a participant's SSCPP application.

(11) Several comments suggested that selection for participation in the pilot program should be based on the Agency's satisfaction that the importer will not deviate from the details of its application and that the importer will continue to abide by applicable regulations, and not based on a regular examination of relevant records. The comments suggested that there would be no benefit to regular examination but that examinations of records on a random basis would ensure compliance.

The Agency believes that the pilot is consistent with the approach recommended by this comment. As part of this pilot program, the Agency believes it is important to have the ability to examine records on a random basis as determined by the Agency.

(12) Several comments expressed concern with the manner in which FDA will determine that an applicant should be withdrawn from the SSCPP. Several comments further suggested that withdrawing an applicant if they receive a ''Warning Letter citing violations of the act relating to drug products'' (see the January 2009 notice) is too broad because the Warning Letter may be unrelated to the products covered by the SSCPP application or to imports in general. The comments suggested narrowing the statement and making it specific to Warning Letters related to the product covered by the application.

FDA disagrees. The Agency intends to fully evaluate an applicant's compliance status and associated risk posed by violations relating to drug products.

(13) Several comments stated that the SSCPP should be evaluated in terms of FDA resource conservation, impact on consumer safety, economic benefit to the trade community, and supply chain facilitation. Some comments further suggested expanding the program to be account-based (along the lines of a ''Qualified Trusted Importer Program'') rather than product-based.

FDA agrees with this comment with respect to evaluating the program. Evaluation of the SSCPP will be based on several factors including, but not limited to, those identified in the comment. However, we have decided that this voluntary program should be product-based at this time.

(14) Several comments requested clarification on the question of whether an API source is required to be disclosed for applicants importing finished dosage form drug products in their SSCPP applications.

Yes, the SSCPP application (Section E, Details of Your Secure Supply Chain) requests this information for both applicants importing finished dosage form drug products and/or APIs.

(15) Several comments suggested changing the language in Box 15, Logistics, on the SSCPP application to read, ''U.S. Port(s) of Entry'' and in Box 16, Logistics, to read, ''U.S. Port(s) of Arrival (if different from Port(s) of Entry).'' In addition, in Box 22, Other Information, it was suggested that it is important for FDA to recognize current normal transportation and trade compliance practice, because some transportation records are kept at a foreign shipping location and not in the United States.

FDA disagrees with changing the language to allow for multiple ports at this time; therefore, the pilot program will be limited to the one port of entry and one port of arrival (if different) listed in the application. In addition, the transportation records must be readily available, regardless of where they are physically located. The Agency will revise the SSCPP application form to clearly state that transportation records may be located either in the United States or outside the country, provided the records are made readily available to FDA upon request.

(16) Some comments asked whether the data collected during the pilot program as described in Section D of the SSCPP application will be shared with participants and the public, and if so, at what frequency. In addition, the comments questioned how industry participants in the program establish themselves as having best practices for securing a supply chain.

The Agency recognizes that at this time there is no industry-wide standard for best practices to secure the drug supply chain. However, there is a draft Good Importer Practices guidance document that was issued in January of 2009 that may be of assistance. Although participation in this pilot program will not establish a firm as having those best practices, at the end of the SSCPP, FDA intends to make summary information about the program publicly available. The Agency does not intend to publicly disclose information submitted in Section D of the SSCPP application that can be associated with a specific individual or entity, unless doing so is required by law.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED REPORTING BURDEN [1]

Secure Supply Chain Pilot Program	Number of respondents	Number of responses per respondent	Total responses	Average burden per response	Total hours
Secure Supply Chain application form	100	5	500	3.5	1,750
Modified Secure Supply Chain application form	5	1	5	1	5
Information submitted in response to termination of participation	1	1	1	1	1

TABLE 1—ESTIMATED REPORTING BURDEN [1]—Continued

Secure Supply Chain Pilot Program	Number of respondents	Number of responses per respondent	Total responses	Average burden per response	Total hours
Total					1,756

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED RECORDKEEPING BURDEN [1]

Secure Supply Chain Pilot Program	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours/ week	Total hours per year
Secure Supply Chain Pilot Program Records	100	5	500	1	500	26,000

[1] There are no capital or operating costs associated with this recordkeeping.

Dated: June 14, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–14990 Filed 6–19–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA 2012–D–0304]

Draft Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Implanted Blood Access Devices for Hemodialysis; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Class II Special Controls Guidance Document: Implanted Blood Access Devices for Hemodialysis.'' This draft guidance document describes a means by which implanted blood access devices may comply with the requirement of special controls for class II devices. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by September 18, 2012.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Class II Special Controls Guidance Document: Implanted Blood Access Devices for Hemodialysis'' to the Division of Small Manufacturers, International and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Melissa Burns, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1646, Silver Spring, MD 20993–0002, 301–796–5616.

I. Background

This draft guidance document was developed as a special control guidance to support the reclassification of implanted blood access devices into class II (special controls). This draft guidance document will serve as the special control for implanted blood access devices. Section 513(f)(3) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) provides that the Agency may initiate the reclassification of a device. This classification will be a reclassification of the device. FDA must publish a notice in the **Federal Register** announcing this reclassification. Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule to reclassify this device type from class III into class II (special controls), under section 513(e) of the FD&C Act (21 U.S.C. 360c(e)).

FDA is issuing this guidance document as a level 1 draft guidance document. FDA will consider any comments that are received within 90 days of the issuance of this notice to determine whether to revise the guidance document.

II. Significance of Special Controls Guidance Document

FDA believes that adherence to the recommendations described in this draft guidance document, when finalized, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of implanted blood access devices classified under § 876.5540(b)(1) (21 CFR 876.5540(b)(1)). If classified as a class II device under § 876.5540(b)(1), implanted blood access devices will need to comply with the requirement for special controls; manufacturers will need to address the issues requiring special controls as identified in the guidance document or by some other means that provides equivalent assurances of safety and effectiveness.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* To receive ''Class II Special Controls Guidance Document: Implanted Blood Access Devices for Hemodialysis,'' you may either send an email request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive

a hard copy. Please use the document number 1781 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to currently approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E are currently approved under OMB control number 0910–0120; the collections of information in 21 CFR 56.115 are currently approved under OMB control number 0910–0130; the collections of information in 21 CFR part 812 are currently approved under OMB control number 0910–0078; and the collections of information in 21 CFR part 801 are currently approved under OMB control number 0910–0485.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 15, 2012.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2012–15025 Filed 6–19–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0419]

Draft Guidance for Industry on Active Controls in Studies To Demonstrate Effectiveness of a New Animal Drug for Use in Companion Animals; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry #204 entitled ''Active Controls in Studies to Demonstrate Effectiveness of a New Animal Drug for Use in Companion Animals.''

This draft guidance advises industry on the use of active controls in studies intended to provide substantial evidence of effectiveness of new animal drugs for use in companion animals. The intent of the guidance is to provide information to clinical investigators who conduct studies using active controls and have a basic understanding of statistical principles.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by August 20, 2012.

ADDRESSES: Submit written requests for single copies of the guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Lisa M. Troutman, Center for Veterinary Medicine (HFV–116), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8322, *lisa.troutman@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry #204 entitled ''Active Controls in Studies to Demonstrate Effectiveness of a New Animal Drug for Use in Companion Animals.'' The purpose of this draft guidance is to provide information to clinical investigators who conduct studies using active controls and have a basic understanding of statistical principles. The draft guidance advises industry on the use of active controls in studies intended to provide substantial evidence of effectiveness of new animal drugs for use in companion animals. The draft guidance compares studies that use active controls to studies that use either placebo concurrent controls or untreated concurrent controls, and it uses these comparisons to illustrate the advantages and disadvantages of using a study with an active control. Examples are provided to illustrate some of the different outcomes that are possible when employing active controls in studies.

II. Significance of Guidance

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 514 have been approved under OMB control number 0910–0032.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *http://www.regulations.gov.*

Dated: June 14, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–14988 Filed 6–19–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases Diabetes Mellitus Interagency Coordinating Committee; Notice of Meeting

The Diabetes Mellitus Interagency Coordinating Committee (DMICC) will hold a web conference on July 18, 2012, from 1 to 3:30 p.m. The public is invited to participate in the web conference. For information on accessing the DMICC web conference, go to the DMICC Web site at *www.diabetescommittee.gov* and click on ''Meeting Report'' in the right-hand sidebar; on the next page, click on ''Attend Web Conference'' (note that the ''Attend Web Conference'' link will not be active until 30-minutes prior to the meeting start time). Non-federal individuals planning to attend the web conference should notify the contact person listed in this notice at least 2 days prior to the meeting.

The DMICC facilitates cooperation, communication, and collaboration on diabetes among government entities. DMICC meetings, held several times a year, provide an opportunity for members to learn about and discuss current and future diabetes programs in DMICC member organizations and to identify opportunities for collaboration. The July 18, 2012, DMICC web conference will focus on ''Peer Care in Diabetes Peer Support and Diabetes Control.''

Any member of the public interested in presenting oral comments to the Committee should notify the contact person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives or organizations should submit a letter of intent, a brief description of the organization represented, and a written copy of their oral presentation in advance of the meeting. Only one representative of an organization will be allowed to present; oral comments and presentations will be limited to a maximum of 5 minutes. Printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the Committee by forwarding their statement to the contact person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. Because of time constraints for the meeting, oral comments will be allowed on a first-come, first-serve basis.

Members of the public who would like to receive email notification about future DMICC meetings should register on the listserv available on the same Web site.

For further information concerning this meeting, contact Dr. Sanford Garfield, Executive Secretary of the Diabetes Mellitus Interagency Coordinating Committee, National Institute of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Boulevard, Room 654, MSC 5460, Bethesda, MD 20892–5460, telephone: 301–594–8803; FAX: 301–402–6271; email: *dmicc@mail.nih.gov*.

Dated: June 13, 2012.

Sanford Garfield,

Executive Secretary, DMICC, Division of Diabetes, Endocrinology and Metabolic Diseases, NIDDK, National Institutes of Health.

[FR Doc. 2012–14938 Filed 6–19–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2012–0002]

Critical Infrastructure and Key Resources (CIKR) Asset Protection Technical Assistance Program (CAPTAP) Survey

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 60-day notice and request for comments; Reinstatement, with change, of a previously approved collection: 1670–0011.

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Infrastructure Protection (IP), Infrastructure Information Collection Division (IICD) will submit the following Information Collection Request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

DATES: Comments are encouraged and will be accepted until August 20, 2012. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Written comments and questions about this Information Collection Request should be forwarded to DHS/NPPD/IP/IICD, 245 Murray Lane SW., Mailstop 0602, Arlington, VA 20598–0602. Email requests should go to Vickie Bovell, *Vickie.Bovell@dhs.gov*. Written comments should reach the contact person listed no later than August 20, 2012. Comments must be identified by ''DHS–2012–0002'' and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*.
- *Email:* Include the docket number in the subject line of the message.
- *Instructions:* All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

SUPPLEMENTARY INFORMATION: The Critical Infrastructure and Key Resources (CIKR) Asset Protection Technical Assistance Program (CAPTAP) is offered jointly by the NPPD/IP and the Federal Emergency Management Agency's National Preparedness Directorate to assist state and local first responders, emergency managers, and Homeland Security officials with training (classroom and Web-based) to develop comprehensive CIKR protection programs in their jurisdictions; provide access to the Automated Critical Asset Management System (ACAMS) tools for using CIKR asset data, prevention and protection information; and provide training and assistance with developing incident response and recovery plans to make their communities safe. The data collection survey measures participant satisfaction with the training provided through the CAPTAP service.

OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate, Office of Infrastructure Protection, Infrastructure Information Collection Division.

Title: Critical Infrastructure and Key Resources (CIKR) Asset Protection Technical Assistance Program (CAPTAP) Survey.

OMB Number: 1670–0011.

Frequency: Annually.

Affected Public: Federal, state, local first responders, emergency managers, and Homeland Security officials.

Number of Respondents: 700 respondents (estimate).

Estimated Time per Respondent: 10 minutes.

Total Burden Hours: 116.69 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $13,145.00.

Dated: June 12, 2012.

Richard Driggers,

Acting Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2012–15014 Filed 6–19–12; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2012–0014]

DHS Data Privacy and Integrity Advisory Committee

AGENCY: Privacy Office, DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The DHS Data Privacy and Integrity Advisory Committee will meet on July 17, 2012, in Washington, DC. The meeting will be open to the public.

DATES: The DHS Data Privacy and Integrity Advisory Committee will meet on Tuesday, July 17, 2012, from 1 p.m. to 5 p.m. Please note that the meeting may end early if the Committee has completed its business.

ADDRESSES: The meeting will be held at the U.S. Access Board, 1331 F Street NW., Suite 800, (across from the National Press Building) Washington, DC 20004–1111.

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact Shannon Ballard, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, as soon as possible.

To facilitate public participation, we invite public comment on the issues to be considered by the Committee as listed in the **SUPPLEMENTARY INFORMATION** section below. A public comment period will be held during the meeting from 4:00 p.m. to 4:30 p.m., and speakers are requested to limit their comments to 3 minutes. If you would like to address the Committee at the meeting, we request that you register in advance by contacting Shannon Ballard at the address provided below or sign up at the registration desk on the day of the meeting. The names and affiliations, if any, of individuals who address the Committee are included in the public record of the meeting. Please note that the public comment period may end before the time indicated, following the last call for comments. Written comments should be sent to Shannon Ballard, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, by July 6, 2012. Persons who wish to submit comments and who are not able to attend or speak at the meeting may submit comments at any time. All submissions must include the Docket Number (DHS–2012–0014) and may be submitted by any *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: PrivacyCommittee@dhs.gov.* Include the Docket Number (DHS–2012–0014) in the subject line of the message.
- *Fax:* (703) 235–0442.
- *Mail:* Shannon Ballard, Designated Federal Officer, Data Privacy and Integrity Advisory Committee, Department of Homeland Security, 245 Murray Lane SW., Mail Stop 0655, Washington, DC 20528.

Instructions: All submissions must include the words ''Department of Homeland Security Data Privacy and Integrity Advisory Committee'' and the Docket Number (DHS–2012–0014). Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

If you wish to attend the meeting, please plan to arrive at the U.S. Access Board by 12:45 p.m., to allow extra time to be processed through security, and bring a photo I.D. The DHS Privacy Office encourages you to register for the meeting in advance by contacting Shannon Ballard, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, at *PrivacyCommittee@dhs.gov.* Advance registration is voluntary. The *Privacy Act* Statement below explains how DHS uses the registration information you may provide and how you may access or correct information retained by DHS, if any.

Docket: For access to the docket to read background documents or comments received by the DHS Data Privacy and Integrity Advisory Committee, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Shannon Ballard, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, Department of Homeland Security, 245 Murray Lane SW., Mail Stop 0655, Washington, DC 20528, by telephone (703) 235–0780, by fax (703) 235–0442, or by email to *PrivacyCommittee@dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act* (FACA), 5 U.S.C. App. 2. The DHS Data Privacy and Integrity Advisory Committee provides advice at the request of the Secretary of Homeland Security and the DHS Chief Privacy Officer on programmatic, policy, operational, administrative, and technological issues within the DHS that relate to personally identifiable information, as well as data integrity and other privacy-related matters. The committee was established by the Secretary of Homeland Security under the authority of 6 U.S.C. 451.

Agenda

During the meeting, the Chief Privacy Officer will provide the Committee an update on the activities of the DHS Privacy Office.

In support of the Committee's ongoing advice to the Department on implementing privacy protections in DHS operations, the Committee will hear and discuss a presentation on the DHS Office of Operations' use of social media for situational awareness. The Committee will also hear and discuss a presentation on privacy considerations surrounding the United States Coast Guard (USCG) pilot program to use biometrics in their illegal immigration interdiction process at sea.

During the meeting, the Committee plans to discuss and may vote on a draft report to the Department providing guidance on privacy protections for cybersecurity pilot programs. The draft report will be posted on the Committee's Web site (*www.dhs.gov/privacy*) on or before July 13, 2012. If you wish to submit comments on the draft report, you may do so in advance of the meeting by forwarding them to

the Committee at the locations listed under **ADDRESSES**. The agenda will be posted on or before July 13, 2012, on the Committee's Web site at *www.dhs.gov/privacy.* Please note that the meeting may end early if all business is completed.

Privacy Act Statement: DHS's Use of Your Information

Authority: DHS requests that you voluntarily submit this information under its following authorities: the *Federal Records Act,* 44 U.S.C. 3101; the FACA, 5 U.S.C. App. 2; and the *Privacy Act of 1974,* 5 U.S.C. 552a.

Principal Purposes: When you register to attend a DHS Data Privacy and Integrity Advisory Committee meeting, DHS collects your name, contact information, and the organization you represent, if any. We use this information to contact you for purposes related to the meeting, such as to confirm your registration, to advise you of any changes in the meeting, or to assure that we have sufficient materials to distribute to all attendees. We may also use the information you provide for public record purposes such as posting publicly available transcripts and meeting minutes.

Routine Uses and Sharing: In general, DHS will not use the information you provide for any purpose other than the Principal Purposes, and will not share this information within or outside the agency. In certain circumstances, DHS may share this information on a case-by-case basis as required by law or as necessary for a specific purpose, as described in the DHS/ALL–002 Mailing and Other Lists System of Records Notice (November 25, 2008, 73 FR 71659).

Effects of Not Providing Information: You may choose not to provide the requested information or to provide only some of the information DHS requests. If you choose not to provide some or all of the requested information, DHS may not be able to contact you for purposes related to the meeting.

Accessing and Correcting Information: If you are unable to access or correct this information by using the method that you originally used to submit it, you may direct your request in writing to the DHS Deputy Chief FOIA Officer at *foia@hq.dhs.gov.* Additional instructions are available at *http://www.dhs.gov/foia* and in the DHS/ALL–002 Mailing and Other Lists System of Records referenced above.

Dated: June 4, 2012.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2012–13969 Filed 6–19–12; 8:45 am]

BILLING CODE 9110–9L–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Approval From OMB of One New Public Collection of Information: Office of Law Enforcement/Federal Air Marshal Service LEO Reimbursement Request

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on a new Information Collection Request (ICR) abstracted below that we will submit to the Office of Management and Budget (OMB) for approval in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves the reimbursement of expenses incurred by airport operators for the provision of law enforcement officers (LEOs) to support airport checkpoint screening.

DATES: Send your comments by August 20, 2012.

ADDRESSES: Comments may be emailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Susan L. Perkins at the above address, or by telephone (571) 227–3398.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Pursuant to 49 U.S.C. 114(g), 44901(g), 44903(e) and 44922(f), TSA has authority to enter into agreements with participants to reimburse expenses incurred by airport operators for the provision of LEOs in support of screening at airport checkpoints. Consistent with this authority, TSA has created the LEO Reimbursement Program, which is run by the Office of Law Enforcement/Federal Air Marshal Service (OLE/FAMS).

TSA OLE/FAMS requires that participants in the LEO Reimbursement Program record the details of all reimbursements sought. In order to provide for the orderly tracking of reimbursements, the LEO Reimbursement Program seeks to establish a new form titled LEO Reimbursement Request.

The LEO Reimbursement Request form will be available at *www.tsa.gov.* Upon completion, participants submit the LEO Reimbursement Request Form directly to the OLE/FAMS LEO Reimbursement Program via fax, electronic upload via scanning the document, mail, or in person. The OLE/FAMS Reimbursement Program reviews all requests for reimbursement forms received. TSA estimates that there will be 326 participants responding monthly, equaling an estimated annual total of 3,912 responses.

TSA estimates each respondent will spend approximately one hour to complete the request for reimbursement form, for a total annual hour burden of 3,912 hours.

Issued in Arlington, Virginia, on June 12, 2012.

Susan Perkins,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2012–15026 Filed 6–19–12; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension, Without Change, of a Currently Approved Collection; Comment Request

ACTION: 60-Day Notice of Information Collection; Form G–79A, Information Relating to Beneficiary of Private Bill (OMB control No. 1653–0026).

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), will submit the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until August 20, 2012.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), John Ramsay, Program (Forms) Manager, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Stop 5705, Washington, DC 20536; (202) 732–4367.

Comments are encouraged and will be accepted for sixty days until August 20, 2012. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, without change, of a currently approved collection.

(2) *Title of the Form/Collection:* Information Relating to Beneficiary of Private Bill.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–79A, U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households; The information in this collection is taken to compose reports on immigration related private bills to Congress to determine whether the bill is necessary or if the subject is worthy of the proposed relief.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 60 minutes (1 hour) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 100 annual burden hours.

Comments and/or questions; requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: John Ramsay, Program (Forms) Manager, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Stop 5705, Washington, DC 20536; (202) 732–4367.

John Ramsay,

Forms Program Manager, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2012–14991 Filed 6–19–12; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension, Without Change, of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection; I–312; Designation of Attorney in Fact (OMB Control No. 1653–0041).

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), will submit the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until August 20, 2012.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), Rich Mattison, Chief, Records Management, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Stop 5705, Washington, DC 20536; (202) 732–4356.

Comments are encouraged and will be accepted for sixty days until August 20, 2012. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, without change, of an existing information collection.

(2) *Title of the Form/Collection:* Designation of Attorney in Fact.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* (No. Form I–312); U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. Section 404(b) of the Immigration and Nationality Act (8 U.S.C. 1101 note) provides for the reimbursement to States and localities for assistance provided in meeting an

immigration emergency. This collection of information allows for State or local governments to request reimbursement.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300 annual burden hours Comments and/or questions; requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Rich Mattison, Chief, Records Management, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Stop 5705, Washington, DC 20536; (202) 732–4356.

Dated: June 15, 2012.

Rich Mattison,

Chief, Records Management, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2012–15058 Filed 6–19–12; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5611–N–01]

Notice of Proposed Information Collection: Comment Request; Labor Standards Training/Event Evaluation

AGENCY: Office of Labor Relations, Office of Departmental Operations and Coordination, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 20, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Jacqueline W. Roundtree, Acting Director, Office of Labor Relations, Department of Housing and Urban Development, 451 7th Street SW., Room 2102, Washington, DC 20410 or *Jackie.Roundtree@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Jade Banks, Senior Policy Advisor, Office of Labor Relations, Department of Housing and Urban Development, 451 7th Street SW., Room 2102, Washington, DC 20410 or *Jade.M.Banks@hud.gov,* telephone (202) 402–5475 (this is not a toll-free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Labor Standards Training/Event Evaluation.

OMB Control Number, if applicable: 2501–NEW.

Description of the need for the information and proposed use: HUD conducts labor standards training and other outreach events for state and local agencies administering HUD programs and for contractors who are or may be engaged on HUD projects subject to prevailing wage requirements. In many cases, we request participants to complete a brief evaluation form at the end of the event. We use the data gathered to assess the effectiveness of our presentations so that we can better meet the needs of these audiences. The evaluation form is generally simple and will take five minutes to complete. Participation is voluntary and no respondent is required to disclose their name or any other identifying information. We are developing a sample format, no more than three standard 8½ x 11 inch pages in length including spaces for additional comments. In addition to a hard-copy version that will be distributed and collected at the event, we anticipate making the form available on-line in a fillable format that can be saved and submitted as an attachment to an email.

Agency form numbers, if applicable: In development.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Item	Number of respondents	Amount of time required	Total time required/annum (in hrs.)
Evaluation (Respondents)	4,000	5 minutes	333
Assessment/event (HUD staff)	150 events	150 hours	150
Recordkeeping/event (HUD staff)	150 events	75 hours	75
Total Annual Burden			558

Status of the proposed information collection: Approval of existing collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: June 13, 2012.

Jacqueline W. Roundtree,

Acting Director, Office of Labor Relations.

[FR Doc. 2012–15109 Filed 6–19–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Request for Nominations for the Invasive Species Advisory Committee; Extension of Submission Deadline

AGENCY: National Invasive Species Council, Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, on behalf of the interdepartmental National Invasive Species Council, proposes to appoint new members to the Invasive Species Advisory Committee (ISAC). The Secretary of the Interior, acting as administrative lead, is requesting nominations for qualified persons to serve as members of the ISAC.

DATES: *The submission deadline for nominations has been extended.* All must now be postmarked by July 5, 2012.

ADDRESSES: Nominations should be sent to Lori Williams, Executive Director, National Invasive Species Council (OS/NISC), Regular Mail: 1849 C Street NW., (MS 1201 EYE), Washington, DC 20240; Express Mail: 1201 Eye Street NW., 5th Floor, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Kelsey Brantley, Program Specialist and ISAC Coordinator, at (202) 513–7243, fax: (202) 371–1751, or by email at *Kelsey_Brantley@ios.doi.gov.*

SUPPLEMENTARY INFORMATION:

Advisory Committee Scope and Objectives

The purpose and role of the ISAC are to provide advice to the National Invasive Species Council (NISC), as authorized by Executive Order 13112, on a broad array of issues including preventing the introduction of invasive species, providing for their control, and minimizing the economic, ecological, and human health impacts that invasive species cause. NISC is Co-chaired by the Secretaries of the Interior, Agriculture, and Commerce, and is charged with providing coordination, planning and leadership regarding invasive species issues. Pursuant to the Executive Order, NISC developed a 2008–2012 National Invasive Species Management Plan (Plan), which is available on the Web at *http://www.invasivespecies.gov/main_nav/mn_NISC_ManagementPlan.html.* NISC is responsible for effective implementation of the Plan including any revisions of the Plan, and also coordinates Federal agency activities concerning invasive species; encourages planning and action at local, tribal, state, regional and ecosystem-based levels; develops recommendations for international cooperation in addressing invasive species; facilitates the development of a coordinated network to document, evaluate, and monitor impacts from invasive species; and facilitates information-sharing.

The role of ISAC is to maintain an intensive and regular dialogue regarding the aforementioned issues. ISAC provides advice in cooperation with stakeholders and communities of interests affected by invasive species. The ISAC usually meets up to twice per year.

After consultation with the other members of NISC, the Secretary of the Interior will actively solicit new nominees and appoint members to ISAC. Prospective members of ISAC should be knowledgeable in and represent communities of interests affected by invasive species such as: Agriculture; aquaculture; biofuel production; livestock grazing and production; landscaping, horticulture, and plant nurseries; pet industry; crop protection; marine fisheries; forest health and management; potable and irrigation water management; natural resource management and restoration; animal health protection; shipping, tourism, highways, and other transportation industries; international development and trade; public land access and management; lake, estuary, and coastal management; hiking, camping, trail riding, and outdoor recreation; conservation organizations; biodiversity conservation; professional scientific research and education societies; urban and suburban park management; energy and mineral resource development; corporate land management; native plant conservation; bird and wildlife watching; hunting, boating, and angling; invasive plant or animal science; plant pathology; environmental education; science and environmental journalism and outreach; natural resource economics; tribal resource management; natural resource political science; and relevant areas of law and regulatory policy.

Nominees should have experience work related to invasive species planning and coordination in areas such as: Developing natural resource management plans; invasive species prevention, early detection and rapid response, control, restoration, and research; multiple jurisdictional planning; integrating science and the human dimension in order to create effective solutions to complex conservation issues; international negotiations; government relations; coordinating the work of diverse groups of stakeholders to resolve complex issues and conflicts; and complying with the National Environmental Policy Act and other Federal requirements for public involvement in major conservation plans. Members will be selected in order to achieve a balanced representation of viewpoints, areas of experience, subject matter expertise, and representation of communities of interests. Members' terms are limited to three (3) years from their appointment to ISAC. Following a term, an ISAC member may request to be considered for an additional term. No member may serve on the ISAC for more than two (2) consecutive terms.

Members of the ISAC and its subcommittees serve without pay. However, while away from their homes or regular places of business in the performance of services of the ISAC, members shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the government service, as authorized by section 5703 of Title 5, United States Code. Employees of the Federal Government ARE NOT eligible for nomination or appointment to ISAC.

The Obama Administration prohibits individuals who are currently federally registered lobbyists to serve on all FACA and non-FACA boards, committees or councils.

Submitting Nominations

Nominations should be typed and must include each of the following:

1. A brief summary of no more than two (2) pages explaining the nominee's suitability to serve on the ISAC.

2. A resume or curriculum vitae.

3. A minimum of two (2) letters of reference.

All required documents must be compiled and submitted in one complete nomination package. This office will NOT assemble nomination packages from documentation sent piecemeal. Incomplete submissions (missing one or more of the items described above) will not be considered. Nominations should be postmarked no later than the extended deadline of July 5, 2012 to Lori Williams, Executive Director, National Invasive Species Council (OS/NISC); Regular Mail: 1849 C Street NW., (MS 1201 EYE), Washington, DC 20240; Express Mail: 1201 Eye Street NW., 5th Floor, Washington, DC 20005.

The Secretary of the Interior, on behalf of the other members of NISC, is actively soliciting nominations of qualified people to ensure that recommendations of the ISAC take into account the needs of the diverse groups served. Any interested citizens meeting the qualification criteria as described in this notice are encouraged to apply.

Dated: June 15, 2012.

Christopher P. Dionigi,

Assistant Director, National Invasive Species Council.

[FR Doc. 2012–15047 Filed 6–19–12; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON00000 L10200000.DF0000 LXSS080C0000]

Notice of Public Meeting Location Change, Northwest Colorado Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting Location Change.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northwest Colorado Resource Advisory Council (RAC) will meet on August 23 at the Rio Blanco County Fairgrounds in Meeker. This is a location change from what was announced in the March 30, 2012 **Federal Register**.

DATES: The Northwest Colorado RAC will meet August 23 beginning at 8 a.m. and adjourn at approximately 3:00 p.m., with public comment periods regarding matters on the agenda at 10 a.m. and 2 p.m. The agendas will be available before the meeting at *http://www.blm.gov/co/st/en/BLM_Resources/racs/nwrac.html.*

ADDRESSES: Rio Blanco County Fairgrounds, 700 Sulphur Creek Road, Meeker, CO.

FOR FURTHER INFORMATION CONTACT: David Boyd, Public Affairs Specialist, Colorado River Valley Field Office, 2300 River Frontage Road, Silt, CO, (970) 876–9008. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Northwest Colorado RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of public land issues in northwestern Colorado.

Topics of discussion during Northwest Colorado RAC meetings may include the BLM National Sage-Grouse Conservation Strategy, working group reports, recreation, fire management, land use planning, invasive species management, energy and minerals management, travel management, wilderness, wild horse herd management, land exchange proposals, cultural resource management, and other issues as appropriate. These meetings are open to the public. The public may present written comments to the RACs. Each formal RAC meeting will also have time, as identified above, allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

Subcommittees under this RAC meet regarding the McInnis Canyon National Conservation Area; Resource Management Plan revisions for the Colorado River Valley, Kremmling, and Grand Junction field offices; and the White River Field Office Resource Management Plan Oil and Gas Amendment. Subcommittees report to the NW RAC at each council meeting. Subcommittee meetings are open to the public. More information is available at *http://www.blm.gov/co/st/en/BLM_Resources/racs/nwrac.html.*

Dated: June 12, 2012.

Helen M. Hankins,

BLM Colorado State Director.

[FR Doc. 2012–15111 Filed 6–19–12; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–10455; 2200–3200–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before May 26, 2012. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by July 5, 2012. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: May 31, 2012.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

CALIFORNIA

Humboldt County

Tishawnik, Address Restricted, Orleans, 12000397

Sierra County

Durgan Bridge, (Highway Bridges of California MPS) Nevada St., Downieville, 12000398

Hansen Bridge, (Highway Bridges of California MPS) E. River St. between Upper Main, & Pearl Sts., Downieville, 12000399

Hospital Bridge, (Highway Bridges of California MPS) Upper Main St. over Downie R., Downieville, 12000400

Jersey Bridge, (Highway Bridges of California MPS) CA 49 from Main to Commercial Sts., Downieville, 12000401

Solano County

Sacramento Northern Railway Historic District, 5848 CA 12, Suisun City, 12000402

IOWA

Plymouth County

Akron Opera House, (Footlights in Farm Country: Iowa Opera Houses MPS) 151 Reed St., Akron, 12000403

MASSACHUSETTS

Middlesex County

Central Square Historic District (Boundary Increase), Roughly 831 to 351–355 Massachusetts Ave., Cambridge, 12000404

NEW YORK

Columbia County

Copake Falls Methodist Episcopal Church, Miles Rd., Copake Falls, 12000405

Van Buren, Martin, National Historic Site (Boundary Increase), 1013 Old Post Rd., Kinderhook, 12000406

Onondaga County

Scottholm Tract Historic District, Roughly bounded by E. Genesee St., Scottholm Terrace, Meadowbrook Dr., & Bradford Pkwy., Syracuse, 12000407

Rockland County

Brookside, 406 N. Broadway, Upper Nyack, 12000408

VERMONT

Chittenden County

Mad River Glen Ski Area Historic District, McCullough Tpk., Fayston, 12000409

Windsor County

Terraces Historic District, 22–60 Maplewood Terr., 2–364 Fairview Terr., 12–249 Hillcrest Terr., 82, 176 Forest Hills Ave., Hartford, 12000410

[FR Doc. 2012–14975 Filed 6–19–12; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–741/749]

Certain Liquid Crystal Display Devices, Including Monitors, Televisions, Modules, and Components Thereof; Final Determination of No Violation of Section 337 With Respect to U.S. Patent Nos. 5,978,063; 5,648,674; 5,621,556; and 5,375,006 and Termination of the Investigation as to Those Patents and Remand of the Investigation as to U.S. Patent No. 6,121,941

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to reverse the determination of the presiding administrative law judge (''ALJ'') that found a violation of section 337 of the Tariff Act of 1930 with respect to U.S. Patent No. 5,648,674 (''the '674 patent''), and to affirm, with modifications, the determination of the ALJ that found no violation with respect to U.S. Patent Nos. 5,978,063 (''the '063 patent''); 5,648,674 (''the '674 patent''); 5,621,556 (''the '556 patent''); and 5,375,006 (''the '006 patent''). The Commission hereby terminates the investigation with a finding of no violation as to the '006, '063, '556 and '674 patents. With respect to U.S. Patent No. 6,121,941 (''the '941 patent''), the Commission has determined to issue a remand to the ALJ to determine whether the asserted claims are invalid in view of the ViewFrame II+2 prior art.

FOR FURTHER INFORMATION CONTACT: Jia Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–4737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted Inv. No. 337–TA–741 on October 18, 2010, based on a complaint filed by Thomson Licensing SAS of France and Thomson Licensing LLC of Princeton, New Jersey (collectively ''Thomson''). 75 FR 63856 (Oct. 18, 2010). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended 19 U.S.C. 1337, by reason of infringement of various claims of the '941,'063,'674,'556; and '006 patents. The Commission instituted Inv. No. 337–TA–749 on November 30, 2010, based on a complaint filed by Thomson. 75 FR 74080 (Nov. 30, 2010). The complaint alleged violations of section 337 of the Tariff Act of 1930 by reason of infringement of various claims of the '063, '556, and '006 patents. On January 5, 2011, the Commission consolidated the two investigations. The respondents are Chimei InnoLux Corporation of Miaoli County, Taiwan and InnoLux Corportation of Austin, Texas (collectively, ''CMI''); MStar Semiconductor Inc. of ChuPei, Taiwan (''MStar''); Qisda Corporation of Taoyuan, Taiwan and Qisda America Corporation of Irvine, California (collectively, ''Qisda''); and BenQ Corporation of Taipei, Taiwan, BenQ America Corporation of Irvine, California, and BenQ Latin America Corporation of Miami, Florida (collectively ''BenQ''); Realtek Semicondustor Corp. of Hsinchu, Taiwan (''Realtek''); and AU Optronics Corp. of Hsinchu, Taiwan and AU Optronics Corp. America of Houston, Texas (collectively ''AUO'').

On January 12, 2012, the ALJ issued the subject ID finding a violation of Section 337 with respect to the '674 patent. The ALJ found that the CMI accused products including the Type 2 Array Circuitry and any Qisda or BenQ accused products incorporating these CMI accused products infringe the asserted claims of the '674 patent. The ALJ found that no other accused products infringe the '674 patent. The ALJ also found that no accused products infringe the asserted claims of the '063 patent, the '006 patent, the '556 patent, or the '941 patent. The ALJ also found that claims 1, 2, 3, 4, 8, 11, 12, 14, and 18 of the '063 patent are invalid for obviousness under 35 U.S.C. 103, and that claims 4 and 14 of the '006 patent are invalid as anticipated under 35 U.S.C. 102. The ALJ further found that claim 17 of the '063 patent, claim 7 of the '006 patent, and the asserted claims of the '556 patent, the '674 patent, and the '941 patent are not invalid. The ALJ concluded that a domestic industry exists in the United States that exploits the asserted patents as required by 19 U.S.C. 1337(a)(2). On January 25, 2011, Thomson, CMI, MStar, Realtek, and AUO each filed a petition for review of the ID. BenQ and Qisda filed a joint petition for review incorporating the other respondents' arguments by reference.

On March 26, 2012 the Commission determined to review (1) Claim construction of the limitation ''layer'' of the asserted claims of the '006 patent; (2) infringement of the asserted claims of the '006 patent; (3) anticipation of claims 4 and 7 of the '006 patent by Scheuble; (4) the claim construction of the limitations ''mechanically rubbing''/''mechanically rubbed,'' ''a plurality of spacing elements,'' and ''an affixing layer'' of the asserted claims of the '063 patent; (5) infringement of the asserted claims of the '063 patent; (6) obviousness of the asserted claims of the '063 patent in view of Sugata and Tsuboyama; (7) whether Lowe and Miyazaki are prior art to the asserted claims of the '063 patent; (8) anticipation of the asserted claims of the '063 patent by Lowe; (9) anticipation of the asserted claims of the '063 patent by Miyazaki; (10) obviousness of the asserted claim of the '556 patent in view of Takizawa and Possin; (11) anticipation and obviousness of the asserted claims of the '674 patent in view of Fujitsu; (12) claim construction of the ''second rate'' ''determined by'' limitation of the asserted claims of the '941 patent and the ''input video signal'' limitation of claim 4 of the '941 patent; (13) infringement of the asserted claims of the '941 patent; (14) anticipation of the asserted claims of the '941 patent by Baba; (15) exclusion of evidence of the ViewFrame II+2 LCD Panel; and (16) economic prong of the domestic industry requirement.

On March 26, 2012, the Commission also determined to review and to take no position on the claim construction of the terms ''drain electrodes'' and ''source electrodes'' of the '556 patent. The Commission requested briefing from the parties on the issues on review, as well as on remedy, the public interest, and bonding.

Having examined the record of this investigation, including the ALJ's final ID and the submissions of the parties,

the Commission has determined to reverse the ALJ's finding of violation of section 337 by the '674 patent and affirm, with modifications, the findings of no violation of section 337 as to the '006, '063 and '566 patents. Specifically, the Commission finds that the asserted claims of the '674 patent are infringed by respondents CMI, Qsida, and BenQ, and that respondents have shown that claims 1, 7, 8, 14, 16, 17, and 18 of the '674 patent are anticipated by Fujitsu and that claims 9, 11, and 13 are obvious in view of Fujitsu and the knowledge of one of ordinary skill in the art. The Commission also finds that (a) Respondents do not infringe the asserted claims of the '006 patent; (b) Scheuble does not anticipate claims 4 and 7 of the '006 patent; (c) respondent AUO, Qsida, and BenQ infringe claims 11, 12, 14, 17, and 18, but not the remaining asserted claims of the '063 patent; (d) respondent CMI does not infringe the asserted claims of the '063 patent; (e) the '063 patent are obvious in view of Sugata and Tsuboyama; (f) Lowe and Miyazaki are prior art to claims 1–4 and 8 of the '063 patent, but not the remaining asserted claims of the '063 patent; (g) respondents have not shown that Lowe anticipates the asserted claims of the '063 patent; (h) Miyazaki anticipates claims 11, 12, 14, 17, and 18 of the '063 patent, but not any of the remaining asserted claims of the '063 patent; (i) respondents have not shown that claim 3 of the '556 patent is obvious in view of Takizawa and Possin; and (j) complainant satisfied the economic prong of the domestic industry requirement under 19 U.S.C. 1337(a)(3)(C). Therefore, the investigation is terminated with a finding of no violation as to the '006, '063, '556 and '674 patents. With respect to the '941 patent, the Commission affirms that (a) respondents do not infringe the asserted claims of the '941 patent; and (b) respondents have not shown that the asserted claims of the '941 patent are obvious in view of Baba. The Commission reverses the ALJ's ruling to exclude from the record evidence of the ViewFrame II+2 prior art, and remands to the ALJ to decide whether the ViewFrame II+2 anticipates the asserted claims of the '941 patent (the Commission notes that this patent expires on August 26, 2012).

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46 and 210.50).

By order of the Commission.

Issued: June 14, 2012.

Lisa Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–15005 Filed 6–19–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Muzaffer Aslan, M.D.; Decision and Order

On December 14, 2011, I, the Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration to Muzaffer Aslan, M.D. (hereinafter, Respondent), of Los Angeles, California. GX 2. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration AA0044040, which authorizes him to dispense controlled substances as a practitioner, on the ground that Respondent does not possess authority under the laws of the State of California, the State in which he is registered with DEA, to dispense controlled substances. *Id.* at 1 (citing 21 U.S.C. 824(a)(3)). The Order further proposed the denial of any applications to renew or modify Respondent's registration, as well as for any additional registration, on the ground that his ''continued registration is inconsistent with the public interest.'' *Id.* (citing 21 U.S.C. 823(f)).

The Show Cause Order specifically alleged that on December 2, 2010, the Medical Board of California had revoked Respondent's State medical license and that the Board had found, *inter alia,* that Respondent had, on multiple occasions, prescribed controlled substances ''without performing a prior good faith examination.'' *Id.* at 1–2. The Order thus alleged that Respondent is currently without authority to handle controlled substances in California. *Id.* at 2.

The Show Cause Order further alleged that notwithstanding that Respondent is ''prohibited from practicing medicine in * * * California,'' he has continued to prescribe controlled substances as evidenced by data from the State's prescription monitoring program. *Id.* Based on the forgoing, I concluded that Respondent's continued registration during the pendency of the proceedings would constitute an ''imminent danger to the public health and safety.'' *Id.* (citing 21 U.S.C. 824(a)(4)). I therefore authorized the immediate suspension of Respondent's registration. *Id.*

On or about December 15, 2011, a DEA Diversion Investigator personally served the Order on Respondent by hand-delivering a copy to his residence.[1] GX 7, at 2. The DI also mailed a copy of the Order to Respondent. *Id.*

On December 28, 2011, Respondent submitted a letter to the Hearing Clerk, Office of Administrative Law Judges. GX 3. Therein, Respondent stated that he was waiving his right to a hearing but submitting a written statement of his position regarding the allegations. GX 3. Pursuant to 21 CFR 1301.43(c), Respondent's statement has been made a part of the record of this proceeding and has been considered in this decision.

On February 7, 2012, the Government submitted its Request for Final Agency Action and forwarded the record to me. Having considered the entire record, I find that substantial evidence supports a finding that Respondent no longer possesses authority under the laws of the State of California to dispense controlled substances. I also find that substantial evidence supports a finding that Respondent dispensed controlled substances even after the Medical Board of California revoked his state license, and was no longer lawfully authorized to dispense controlled substances under his CSA registration. I thus conclude that the Government has made out a *prima facie* case for revocation of Respondent's registration. Finally, because nothing in Respondent's statement refutes the Government's *prima facie* case, I will order that his registration be revoked and that any application be denied. I make the following findings of fact.

Findings

Respondent is the holder of DEA Certificate of Registration AA0044040, which authorized him (prior to the Immediate Suspension Order), to dispense controlled substances in schedules II through V as a practitioner at the registered location of 11847 Wilshire Blvd., Suite 303–A, Los Angeles, CA 90025. GX 1. Respondent's registration does not expire until June 30, 2012. *Id.*

Respondent previously held Physician's and Surgeon's Certificate Number A18999, which was issued by the Medical Board of California (MBC). However, on November 3, 2010, the

[1] The Order further explained the procedures available to Respondent to contest the allegations. GX 2, at 2–3. These included his right to request a hearing, his right to submit a written statement regarding the matters of fact and law alleged in the Show Cause Order while waiving his right to a hearing, and finally, the consequences for failing to do either within the thirty-day time limit. *See id.* (citing 21 CFR 1301.43 and 1316.47).

MBC adopted the Proposed Decision of a State Administrative Law Judge (ALJ) regarding the MBC's Accusation and Petition to Revoke Probation; the MBC's order became effective on December 2, 2010. GX 4, at 1.

As set forth in the Proposed Decision, Respondent and the MBC had previously entered into a Stipulated Settlement and Disciplinary Order, which placed Respondent on probation and required that he comply with various terms and conditions, including that he ''maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by him.'' *Id.* at 3. While following the MBC's Order, Respondent continued to prescribe controlled substances, he failed to comply with the Order and yet filed reports with the MBC, under the penalty of perjury, stating that he was doing so. *Id.* at 4–6. Indeed, at the state hearing, he asserted that he was not required to keep the log even though he was warned on various dates by MBC inspectors that he was required to do so. *Id.*

The State ALJ found that Respondent's ''affirmations under penalty of perjury that he had complied with all the terms and conditions of his probation were knowingly false.'' *Id.* at 6. The State ALJ further found that Respondent had refused to admit wrongdoing and had provided no assurances that he would comply with the condition in the future. *Id.* at 6–7. The State ALJ thus concluded that ''the public health, safety and welfare cannot be protected by any discipline short of revocation'' and thus proposed that Respondent's medical license be revoked. *Id.* at 7–8.

The Government also submitted printouts it obtained from the California Substance Utilization Review & Evaluation System showing Respondent's prescribing history. However, this document does not show the actual date on which the prescriptions were written, but rather, the dates on which they were filled. Even so, because under the CSA, a prescription cannot be filled more than six months after the date on which it was written, *see* 21 U.S.C. 829(b), the printouts establish that Respondent issued prescriptions for such drugs as hydrocodone/acetaminophen, a schedule III controlled substance, as well as zolpidem tartrate and diethylproprion hcl, both being schedule IV controlled substances, after his state license was revoked.[2] *See* GXs 5 & 6; *see also* 21 CFR 1308.13(e); *id.* 1308.14(c) & (e).

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 ''upon a finding that the registrant * * * has had his State license * * * suspended [or] revoked * * * by competent State authority and is no longer authorized by State law to engage in the * * * dispensing of controlled substances.'' Moreover, DEA has repeatedly held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration.

This rule derives from the text of two provisions of the CSA. First, Congress defined ''the term 'practitioner' [to] mean[ ] a * * * physician * * * or other person licensed, registered or otherwise permitted, by * * * the jurisdiction in which he practices * * * to distribute, dispense, [or] administer * * * a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). And because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the Act, DEA has repeatedly held that revocation is the appropriate sanction whenever a practitioner is no longer authorized to dispense controlled substances, regardless of whether the practitioner's state authority has been revoked or is subject only to a suspension of fixed duration. *See James L. Hooper,* 76 FR 71371, 71373 (2011) (collecting cases).

In his written statement, Respondent does not dispute that his state license has been suspended. Rather, he asserts that the MBC's order ''is the result of the exaggerated reports of two young inexperienced doctors (who are not internal medicine specialists such as [him]self, but are preventive medicine and family medicine specialists, and are therefore unqualified to make a report) each paid $150 per hour for their work of review of seven of my patients' charts.'' GX 3, at 1. Respondent further asserts that the MBC's order of revocation ''is essentially the result of a disagreement between the Medical Board and myself'' and that all the information regarding his prescriptions ''was kept in the Progress Notes of the patients' charts'' and ''therefore[,] there was no reason to ask me to keep'' the log. *Id.* at 1–2.

Respondent's argument is a collateral attack on the validity of the MBC's Revocation Order. However, DEA has held repeatedly that a registrant cannot collaterally attack the result of a state criminal or administrative proceeding in a proceeding under section 304, 21 U.S.C. 824, of the CSA. *Calvin Ramsey,* 76 FR 20034, 20036 (2011) (other citations omitted); *Brenton D. Glisson,* 72 FR 54296, 54297 n.2 (2007); *Shahid Musud Siddiqui,* 61 FR 14818, 14818–19 (1996). Rather, Respondent's challenge to the validity of the MBC's Revocation Order must be litigated in the forums provided by the State of California, and his contentions regarding the validity of the MBC's Order are not material to this Agency's resolution of whether he is entitled to maintain his DEA registration in California.

Because it is undisputed that Respondent currently lacks authority to dispense controlled substances in California, the State in which he holds his DEA registration, Respondent no longer meets the definition of a practitioner under the CSA and therefore, he is not entitled to maintain his registration. Accordingly, his registration will be revoked.[3]

[2] Because the document does not list the actual date of issuance, but rather, only the fill date of the prescriptions, many of the prescriptions listed as having been filled or refilled after the effective date of the Board's revocation order may have actually been written before the effective date. Accordingly, in making this finding, I have relied only on those prescriptions which were initially filled after June 2, 2011.

[3] The record also supports a finding that Respondent continued prescribing controlled substances following the revocation of his state license. This conduct is actionable under 21 U.S.C. § 824(a)(4), which authorizes the revocation of a registration where a registrant has committed acts which ''render his registration * * * inconsistent with the public interest.'' In determining the public interest, the Agency is required to consider the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing * * * controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(f). The public interest factors are considered in the disjunctive. *Robert A. Leslie,* 68 FR 15227, 15230 (2003). I may rely on any one or a combination of factors and may give each factor the weight I deem appropriate in determining whether to revoke an existing registration or to deny an application for a registration. *Id.* Moreover, I am ''not required to make findings as to all of the

Continued

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a)(3) & (4), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration AA0044040, issued to Muzaffer Aslan, M.D., be, and it hereby is, revoked. I further order that any pending application of Muzaffer Aslan, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective immediately.[4]

Dated: June 8, 2012.

Michele M. Leonhart,

Administrator.

[FR Doc. 2012–15061 Filed 6–19–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection of Information for the Evaluation of the Self-Employment Training Demonstration; New Collection

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department or DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) [44 U.S.C. 3505(c)(2)(A)]. The program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of the collection requirements on respondents can be properly assessed.

The proposed application package, follow-up survey, site visit data collection, and case study interviews are for an evaluation of the Self-Employment Training (SET) Demonstration. This demonstration and its evaluation are sponsored by ETA to understand whether providing dislocated workers access to self-employment training and counseling services increases their likelihood of reemployment, their earnings, and their propensity to enter into self-employment.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before August 20, 2012.

ADDRESSES: A copy of this proposed information collection request may be obtained by contacting Janet Javar at 202–693–3677 (this is not a toll-free number) or email: *javar.janet@dol.gov.* Comments are to be submitted to Department of Labor/Employment and Training Administration, Attn: Janet Javar, 200 Constitution Avenue NW., Room N–5641, Washington, DC 20210. Written comments may be transmitted by facsimile to 202–693–2766 (this is not a toll-free number) or emailed to *javar.janet@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

ETA seeks to implement and rigorously evaluate the effectiveness of innovative strategies for promoting employment based on the authority granted to the agency under Title I of the Workforce Investment Act. The SET Demonstration focuses specifically on self-employment as a reemployment strategy for dislocated workers. The demonstration is premised on the hypotheses that: (1) Self-employment could be a viable strategy for dislocated workers to become reemployed; (2) starting a small business is difficult, especially for individuals who lack business expertise or access to start-up capital; and (3) dislocated workers might experience difficulties locating and accessing training and counseling services that could effectively prepare them for self-employment via the existing workforce infrastructure.

The SET Demonstration will implement a new service delivery model that seeks to better connect dislocated workers to self-employment services. This approach differs from previous large-scale demonstration programs, which have provided mixed evidence on the effectiveness of self-employment services on earnings and employment, because the SET Demonstration will: (1) Rely on self-employment advisors to offer more intensive business development counseling services than prior demonstrations have offered; and (2) concentrate on dislocated workers who have fairly limited traditional employment prospects but are well-positioned to benefit from self-employment counseling and training. The SET Evaluation will assess the effectiveness of the SET Demonstration model.

II. Review Focus

The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

III. Current Actions

This proposed information collection will involve collecting data from participants of the SET Demonstration.

Agency: Employment and Training Administration.

Type of Review: New Collection.

Title of Collection: Information and Survey Collection for the Self-Employment Training Demonstration.

OMB Control Number: 1205–0NEW.

Affected Public: Applicants and participants (dislocated workers), One-Stop Career Center (OSCC)

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factors.'' *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005); *see also Morall* v. *DEA,* 412 F.3d 165, 173–74 (D.C. Cir. 2005). *See also MacKay* v. *DEA,* 664 F.3d 808, 816 (10th Cir. 2011).

In this matter, I have considered all of the factors. With respect to factor one, the same considerations as set forth above in the discussion of my authority under 21 U.S.C. 824(a)(3) apply. Furthermore, while there is no evidence that Respondent has been convicted of an offense falling within factor three, under DEA precedent, this is not dispositive. *See MacKay,* 664 F.3d at 817–18 (quoting *Dewey C. MacKay,* 75 FR 49956, 49973 (2010)).

However, I further find that evidence, which is relevant under factor two (Respondent's experience in dispensing controlled substances) and factor four (Respondent's compliance with applicable laws related to controlled substances), establishes that Respondent issued controlled substance prescriptions after the State revoked his medical license. This is a violation of 21 U.S.C. 1306.03(a)(1), which provides that ''[a] prescription for a controlled substance may be issued only by an individual practitioner who is * * * [a]uthorized to prescribe controlled substances by the jurisdiction in which he is licensed to practice his profession'' and thus constitutes a violation of 21 U.S.C. 841(a)(1). Moreover, while Respondent stated in his letter that ''[t]his is not accurate'' and that two MBC investigators ''talked to me about it,'' GX 3, at 1, he offered no probative evidence to refute the allegation.

[4] For the same reason that led me to order the Immediate Suspension of Respondent's registration, I conclude that the public interest necessitates that this Order be effective immediately. *See* 21 CFR 1316.67.

administrators and staff, and participating providers' self-employment advisors and other staff providing support for the demonstration.

Estimated Total Burden Hours: 5,449.

Estimated Total Burden Cost: $107,530.

For Consent and Application Forms

Number of Respondents: 4,000 applicants.[1]

Frequency: Once.

Average Time per Response: 30 minutes.

Estimated Burden Hours: 2,000 hours [= 4,000 × (20/60)].

Estimated Burden Cost: $33,260 [= 2,000 × $16.63].[2]

For Program Participation Records

• Participant Tracking Data

Number of Respondents: 24 self-employment advisors at the demonstration's microdevelopment organizations (MDO) partner providers (on behalf of 1,500 program group members, each active for approximately 10 months).

Frequency: Monthly during two-year implementation period.

Number of Responses: 15,000 [10 monthly responses × 1,500 cases].[3]

Average Time per Response: 3 minutes.

Estimated Burden Hours: 750 hours [= 15,000 × (3/60)].

Estimated Burden Cost: $25,403 [= 750 × $33.87].[4]

• Service Termination Information

Number of Respondents: 24 self-employment advisors at the SET Demonstration's microdevelopment organizations (MDO) partner providers (on behalf of each participant exiting the SET Demonstration before the end of the one-year service period).

Frequency: Once per case.

Number of responses: 225 [0.15 × 1,500 cases].

Average Time per Response: 20 minutes.

Estimated Burden Hours: 75 hours [= 225 × (20/60)].

Estimated Burden Cost: $2,450 [= 75 × $33.87].

Subtotal of Estimated Burden Hours, Program Participation Records: 885 hours.

Subtotal of Estimated Burden Cost, Program Participation Records: $27,493.

For the 12–Month Follow-Up Survey

Number of Respondents: 2,400 study members.[5]

Frequency: Once.

Average Time per Response: 60 minutes.

Estimated Burden Hours: 2,400 hours [= 2,400 × (60/60)].

Estimated Burden Cost: $39,912 [= 2,400 × $16.63].

For Site Visit Data Collection

Number of Respondents: 64 individuals, which includes 24 self-employment advisors at MDO partner providers, 16 OSCC administrators and staff, 24 additional staff members at organizations providing support for the demonstration.

Frequency: Twice.

Number of responses: 128 [= 2 × (24 + 16 + 24)].

Average Time per Response: 90 minutes.

Estimated Burden Hours: 192 hours [= 128 × (90/60)].

Estimated Burden Cost: $5,883 [= 192 × ($33.87 × (24/64) + $28.70 × (40/64))].[6]

For Case Study Interviews

Number of Respondents: 32 selected members of the program group.

Frequency: Once.

Average Time per Response: 60 minutes.

Estimated Burden Hours: 32 hours [= 32 × (60/60)].

Estimated Burden Cost: $532 [= 32 × $16.63].

TABLE 1—BURDEN ESTIMATES FOR SET EVALUATION DATA COLLECTION EFFORTS

Respondents	Number of responses/instances of collection	Frequency of collection	Average time per response (minutes)	Burden (hours)	Burden cost [a]
Consent and Application Forms:					
Applicants to the program	4,000 [b]	Once	30	2,000	$33,260
Program Participation Records:					
Participant Tracking Data:					
Self-employment advisors	24 respondents with 1,500 total cases [c]	10 monthly responses per case, submitted over a two-year period [d]	3	750	25,403
Service Termination Information:					

[1] This pool of 4,000 applicants is expected to be self-selected from a larger pool of dislocated workers after participating in online SET Demonstration orientation sessions. (No information will be collected in these orientation sessions.) It is anticipated that approximately 3,000 applicants will meet the demonstration's eligibility requirements; these successful applicants will be assigned with equal probability to the program and control groups.

[2] Hourly wage rates were calculated using the Project GATE public use dataset based on members of the control group who were (1) unemployed at baseline and (2) had collected UI benefits in the 12 months prior to applying to the program. (Project GATE files are available from ETA at: *http://www.doleta.gov/reports/projectgate/.*) This subgroup of the GATE study sample is likely to most closely resemble the pool of dislocated workers who will apply to the SET Demonstration. At the six-month follow-up survey (the midpoint of which was April, 2005), the average wage rate among employed members of this sub-group was $14.15. At the eighteen month follow-up, this average was $14.62. Adjusting for inflation, these wage rates translate to $16.62 and $16.64, respectively, in 2012 dollars. Given the similarity between these figures, a wage rate of $16.63 per hour is used for potential SET Demonstration applicants and participants.

[3] It is expected that most of the 1,500 program group members will remain active in the SET Demonstration for the entire one-year service period. However, some may become ''inactive'' before the end of the program. Specifically, it is assumed that 5 percent of the program group will drop out of the demonstration within the first month and another 15 percent will have their services terminated by the business development counselor within the first four months of participation. As a result, the average program group member will remain active for approximately 10 person-months.

[4] Based on the May 2011 National Occupational Employment and Wage Estimates maintained by the Bureau of Labor Statistics (*http://www.bls.gov/oes/current/oes_nat.htm*), the average wage for ''Business Operations Specialists, All Other'' was $32.21, which corresponds to $33.87 in 2012 dollars.

[5] It is assumed that the follow-up survey will achieve a response rate of 80 percent among individuals who were randomly assigned to the program and control groups.

[6] According to the May 2011 National Occupational Employment and Wage Estimates maintained by the Bureau of Labor Statistics (*http://www.bls.gov/oes/current/oes_nat.htm*), the average wage for ''Training and Development Specialists'' was $28.14, which corresponds to $28.70 in 2012 dollars. This wage rate is used for OSCC staff and additional staff members (other than the program's self-employment advisors) at organizations providing support for the demonstration.

TABLE 1—BURDEN ESTIMATES FOR SET EVALUATION DATA COLLECTION EFFORTS—Continued

Respondents	Number of responses/instances of collection	Frequency of collection	Average time per response (minutes)	Burden (hours)	Burden cost [a]
Self-employment advisors	24 respondents with 225 total cases [e].	Once	20	75	2,540
Total for Program Participation Records.				825	27,943
12-Month Follow-Up Survey:					
Successful applicants who went through random assignment.	2,400 [f]	Once	60	2,400	39,912
Site Visits: [g]					
Self-employment advisors and other staff at SET Demonstration partner providers.	24	Twice	90	72	2,439
OSCC administrators and case managers.	16	Twice	90	48	1,378
Other staff at organizations providing support for the demonstration.	24	Twice	90	72	2,066
Total for Site Visits				192	5,883
Case Study Interviews:					
Selected members of the program group completing follow-up surveys.	32	Once	60	32	532
Total Burden				5,549	107,530

[a] As noted in the main text, burden cost calculations assume wage rates of (1) $16.63 per hour among potential applicants and participants in the SET Demonstration; (2) $33.87 per hour among self-employment advisors; and (3) $28.70 per hour among staff at OSCCs and other staff at organizations providing support for the demonstration.

[b] Although eligibility criteria will be explicitly outlined in publicity materials and orientation sessions for the program, it is assumed that approximately one in four applicants will be determined to be ineligible and, therefore, screened out. Thus, it is anticipated that 4,000 applications will be collected in order to enroll 3,000 study members.

[c] Each of the 1,500 members of program group will be tracked by one of 24 self-employment advisors.

[d] Given a one-year service period, it is expected that 10 monthly tracking reports per case, on average, will be received based on the following assumptions: (1) 5 percent of the program group will drop out of the demonstration within the first month after random assignment, and (2) another 15 percent will have services terminated and be referred back to an OSCC by SET self-employment advisors within the first four months after random assignment.

[e] An expected total of 225 service terminations will be initiated by one of 24 self-employment advisors.

[f] This figure assumes that the follow-up survey will achieve a response rate of 80 percent.

[g] The burden estimates for each site visit respondent include (1) time coordinating with the study team and preparing for the interview and (2) participating in the on-site meeting.

Comments submitted in response to this notice will be summarized and may be included in the request for Office of Management and Budget approval of the final information collection request. The comments will become a matter of public record.

Signed in Washington, DC this Tuesday of June 12, 2012.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2012–14921 Filed 6–19–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Filing Location for Foreign Labor Certification Program Temporary Program Applications; Change of Address

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: This Notice announces a change in the location where applications for temporary labor certification programs will be filed and/or are being processed.

DATES: This notice is effective on August 2, 2012.

FOR FURTHER INFORMATION CONTACT: William L. Carlson, Ph.D., Administrator, Office of Foreign Labor Certification, U.S. Department of Labor, 200 Constitution Avenue NW., Room C–4312, Washington, DC 20210; telephone: (202) 693–3010 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Foreign Labor Certification (OFLC) provides national leadership and policy guidance, and develops regulations and procedures to carry out the responsibilities of the Secretary of Labor under the Immigration and Nationality Act (INA) concerning foreign workers seeking admission to the United States (U.S.) in order to work under the labor certification programs authorized by the INA. In carrying out its statutory responsibility, OFLC administers both temporary nonimmigrant labor certification programs and the permanent immigrant labor certification program. The Secretary of Labor issues certifications in connection with several nonimmigrant visa programs as well as the permanent program. To obtain a labor certification under most labor certification programs administered by OFLC, employers must demonstrate that there are insufficient U.S. workers available, willing, and qualified to perform the work, and that the wage offered to the foreign worker(s) will not adversely impact U.S. workers similarly employed. These labor certification activities are carried out in two National Processing Centers (NPC), one in Atlanta, GA and one in Chicago, IL. The Chicago NPC is responsible for adjudicating all employer applications for temporary labor certification under the H–1B, H–1B1, E–3, H–2A, H–2B, and D–1 programs.

The purpose of this Notice is to inform the public about a change of address for the Chicago NPC. The address change will be effective as of the effective date of this Notice. On that date, the Chicago NPC should be fully functional in the new location. For 3 weeks after that date, the Chicago NPC will receive via courier all written correspondence submitted to their former address. This is to ensure a smooth transition and allow all interested parties to commence using the new address. On August 23, 2012, the courier will cease to operate and all submissions to the former address of the Chicago NPC will be returned to the sender. From the effective date of this notice, the address for the collection of H–2A fees should also be used for the submission of these fees.

II. Address

Old Address: U.S. Department of Labor, Employment and Training Administration, Office of Foreign Labor Certification, Chicago National Processing Center, 536 South Clark Street, 9th Floor, Chicago, IL 60605–1509.

New Address: U.S. Department of Labor, Employment and Training Administration, Office of Foreign Labor Certification, Chicago National Processing Center, 11 West Quincy Court, Chicago, IL 60604–2105; telephone: (312) 886–8000; facsimile: 312–353–8830.

New Address in connection with fees: The following address is to be used for all invoices/fees submitted in connection with the H–2A program: U.S. Department of Labor, Employment and Training Administration, Office of Foreign Labor Certification, Chicago National Processing Center, P.O. Box A3804, Chicago, IL 60690–A3804.

Signed in Washington, DC this Tuesday of June 12, 2012.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2012–15013 Filed 6–19–12; 8:45 am]

BILLING CODE 4510–FP–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that twenty-four meetings of the Humanities Panel will be held during July 2012, as follows. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965 (20 U.S.C. 951–960, as amended).

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: The meetings will be held at the Old Post Office Building, 1100 Pennsylvania Ave. NW., Washington, DC 20506. See **SUPPLEMENTARY INFORMATION** section for meeting room numbers.

FOR FURTHER INFORMATION CONTACT: Lisette Voyatzis, Committee Management Officer, 1100 Pennsylvania Ave. NW., Room 529, Washington, DC 20506, or call (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the National Endowment for the Humanities' TDD terminal at (202) 606–8282.

SUPPLEMENTARY INFORMATION:

Meetings

1. *Date:* July 10, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 421.
This meeting will discuss applications of Colleges & Universities submitted to the Challenge Grants program in the Office of Challenge Grants.

2. *Date:* July 17, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
This meeting will discuss applications on the subject of Literature & Language submitted to the Awards for Faculty grant program in the Division of Research Programs.

3. *Date:* July 17, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
This meeting will discuss applications on the subject of History & Social Science submitted to the Awards for Faculty grant program in the Division of Research Programs.

4. *Date:* July 17, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 421.
This meeting will discuss applications of Colleges & Universities submitted to the Challenge Grants program in the Office of Challenge Grants.

5. *Date:* July 18, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
This meeting will discuss applications on the subject of The Arts, Philosophy & Religion submitted to the Awards for Faculty grant program in the Division of Research Programs.

6. *Date:* July 18, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
This meeting will discuss applications on the subject of History & Social Science submitted to the Awards for Faculty grant program in the Division of Research Programs.

7. *Date:* July 19, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 421.
This meeting will discuss applications on the subject of History submitted to the Challenge Grants program in the Office of Challenge Grants.

8. *Date:* July 19, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
This meeting will discuss applications on the subject of British Literature submitted to the Fellowships for University Teachers grant program in the Division of Research Programs.

9. *Date:* July 19, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
This meeting will discuss applications on the subject of British Literature submitted to the Fellowships for University Teachers grant program in the Division of Research Programs.

10. *Date:* July 23, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
This meeting will discuss applications on the subject of Communications, Media, Rhetoric & Linguistics submitted to the Fellowships for University Teachers grant program in the Division of Research Programs.

11. *Date:* July 23, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
This meeting will discuss applications on the subject of Art History submitted to the Fellowships for University Teachers grant program in the Division of Research Programs.

12. *Date:* July 24, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 421.
This meeting will discuss applications for Research Institutes submitted to the Challenge Grants program in the Office of Challenge Grants.

13. *Date:* July 24, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
This meeting will discuss applications on the subject of Music submitted to the Fellowships for University Teachers grant program in the Division of Research Programs.

14. *Date:* July 24, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 415.

This meeting will discuss applications on the subject of Music submitted to the Fellowships for University Teachers grant program in the Division of Research Programs.

15. *Date:* July 25, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 315.

This meeting will discuss applications on the subject of Philosophy submitted to the Fellowships for University Teachers grant program in the Division of Research Programs.

16. *Date:* July 25, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 415.

This meeting will discuss applications on the subject of Philosophy submitted to the Fellowships for University Teachers grant program in the Division of Research Programs.

17. *Date:* July 26, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 421.

This meeting will discuss applications on the subject of History submitted to the Challenge Grants program in the Office of Challenge Grants.

18. *Date:* July 26, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 415.

This meeting will discuss applications on the subject of Literary Theory & Film submitted to the Fellowships for University Teachers grant program in the Division of Research Programs.

19. *Date:* July 26, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 315.

This meeting will discuss applications on the subject of Comparative Literature submitted to the Fellowships for University Teachers grant program in the Division of Research Programs.

20. *Date:* July 27, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 315.

This meeting will discuss applications on the subject of American History submitted to the Fellowships for University Teachers grant program in the Division of Research Programs.

21. *Date:* July 27, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 415.

This meeting will discuss applications on the subject of American History submitted to the Fellowships for University Teachers grant program in the Division of Research Programs.

22. *Date:* July 30, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 315.

This meeting will discuss applications on the subject of American Studies submitted to the Fellowships for University Teachers grant program in the Division of Research Programs.

23. *Date:* July 31, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: Via conference call.

This meeting will discuss applications of Public Libraries submitted to the Challenge Grants program in the Office of Challenge Grants.

24. *Date:* July 31, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 315.

This meeting will discuss applications on the subject of American Literature submitted to the Fellowships for University Teachers grant program in the Division of Research Programs.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated July 19, 1993.

Dated: June 15, 2012.

Lisette Voyatzis,

Committee Management Officer.

[FR Doc. 2012–15087 Filed 6–19–12; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–131; NRC–2012–0141]

License Amendment Request From the Alan J. Blotcky Reactor Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of decommissioning plan, proposed license amendment and opportunity to provide comments, request a hearing and to petition for leave to intervene.

DATES: Submit comments by July 20, 2012. Requests for a hearing or leave to intervene must be filed by August 20, 2012.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publically available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0141. You may submit comments by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0141. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Theodore Smith, Project Manager, Reactor Decommissioning Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6721; email: *Theodore.Smith@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0141 when contacting the NRC about the availability of information regarding this document. You may access information related to this document by the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0141.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The Alan J. Blotcky Reactor Facility Decommissioning Plan and License Amendment Request is available in ADAMS under Accession Number ML12075A202.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2012–0141 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS, and the NRC does not edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Introduction

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has received, by letters dated March 8, 2012 (ML12075A202), August 15, 2011 (ML11255A334), August 5, 2010 (ML102250111) and September 21, 2004 (ML042740512), a revised proposed decommissioning plan and license amendment application from the Department of Veterans Affairs—Nebraska-Western Iowa Health Care System requesting approval of a decommissioning plan and changes to the technical specifications for its Alan J. Blotcky Reactor Facility site located in Omaha, Nebraska, License No. R–57. Specifically, the amendment modifies the technical specifications to reflect permanent shutdown. An NRC administrative review found the application acceptable to begin a technical review. If the NRC approves the amendment, the approval will be documented in an amendment to NRC License No. R–57. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations. These findings will be documented in a Safety Evaluation Report.

III. Notice and Solicitation of Comments

In accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) 20.1405, the Commission is providing notice and soliciting comments from local and State governments in the vicinity of the site and any Federally-recognized Indian tribe that could be affected by the decommissioning. This notice and solicitation of comments is published pursuant to 10 CFR 20.1405, which provides for publication in the **Federal Register** and in a forum, such as local newspapers, letters to State or local organizations, or other appropriate forum, that is readily accessible to individuals in the vicinity of the site. Comments should be provided within 30 days of the date of this notice.

Further, in accordance with 10 CFR 50.82(b)(5), notice is also provided to interested persons of the Commission's intent to approve the plan by amendment, subject to such conditions and limitations as it deems appropriate and necessary, if the plan demonstrates that decommissioning will be performed in accordance with the NRC's regulations and will not be inimical to the common defense and security or to the health and safety of the public.

IV. Opportunity To Request a Hearing and Petitions for Leave To Intervene

Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, ''Hearing Requests, Petitions To Intervene, Requirements for Standing, and Contentions.'' Interested persons should consult 10 CFR 2.309, which is available at the NRC's Public Document Room (PDR), located at O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 (or call the PDR at 1–800–397–4209 or 301–415–4737). The NRC regulations are also accessible online in the NRC Library at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*.

Any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license amendment in response to the application. The petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for amendment that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application for amendment fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Atomic Safety and Licensing Board (the Licensing Board) will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Non-timely petitions for leave to intervene and contentions, amended

petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the Licensing Board or a Presiding Officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A State, county, municipality, Federally-recognized Indian tribe, or agencies thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by August 20, 2012. The petition must be filed in accordance with the filing instructions in section V of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that State and Federally-recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in a hearing as a nonparty pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by August 20, 2012.

V. Electronic Submissions (E–Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E–Filing rule (72 FR 49139; August 28, 2007). The E–Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E–Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E–Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E–Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E–Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E–Filing system. To be timely, an electronic filing must be submitted to the E–Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E–Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E–Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E–Filing system.

A person filing electronically using the agency's adjudicatory E–Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited

delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E–Filing, may require a participant or party to use E–Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E–Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from June 20, 2012. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 7th day of June, 2012.

Keith I. McConnell,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2012–15009 Filed 6–19–12; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Hispanic Council on Federal Employment

AGENCY: Office of Personnel Management.

ACTION: Scheduling of Council meeting.

SUMMARY: The Hispanic Council on Federal Employment (HCFE) will hold a meeting on Thursday, July 19th 2012, at the time and location shown below. The Council is an advisory committee composed of representatives from Hispanic organizations and senior government officials. Along with its other responsibilities, the Council shall advise the Director of the Office of Personnel Management on matters involving the recruitment, hiring, and advancement of Hispanics in the Federal workforce. The Council is co-chaired by the Chief of Staff of the Office of Personnel Management and the Assistant Secretary for Human Resources and Administration at the Department of Veterans Affairs.

The meeting is open to the public. Please contact the Office of Personnel Management at the address shown below if you wish to present material to the Council at the meeting. The manner and time prescribed for presentations may be limited, depending upon the number of parties that express interest in presenting information.

DATES: July 19th, 2012, from 2–4 p.m.

Location: U.S. Office of Personnel Management, Theodore Roosevelt Building, the Pendleton, 5th Floor, 1900 E St. NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Veronica E. Villalobos, Director for the Office of Diversity and Inclusion, Office of Personnel Management, 1900 E St. NW., Suite 5H35, Washington, DC 20415. Phone (202) 606–0040 FAX (202) 606–2183 or email at *Jesse.Frank@opm.gov.*

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2012–14952 Filed 6–19–12; 8:45 am]

BILLING CODE 6325–46–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2012–25 and CP2012–33; Order No. 1369]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Parcel Select & Parcel Return Service Contract 4 to the competitive product list. This notice addresses procedural steps associated with this filing.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed a formal request and associated supporting information to add Parcel Select & Parcel Return Service Contract 4 to the competitive product list.[1] The Postal Service asserts that Parcel Select & Parcel Return Service Contract 4 is a ''competitive product not of general applicability within the meaning of 39 U.S.C. 3632(b)(3).'' *Id.* at 1. The Request has been assigned Docket No. MC2012–25.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product. *Id.*, Attachment B. The instant contract has been assigned Docket No. CP2012–33.

Request. To support its Request, the Postal Service filed the following six attachments:

- Attachment A—a redacted version of Governors' Decision No. 11–6 and accompanying analysis. An explanation and justification is provided in the Governors' Decision and analysis filed in the unredacted version under seal;
- Attachment B—a redacted version of the instant contract;
- Attachment C—the proposed change in the Mail Classification Schedule;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a)(1), (2), and (3); and
- Attachment F—an Application for Non-public Treatment of the material filed under seal. The materials filed under seal are the unredacted version of the instant contract and the required cost and revenue data.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the instant contract will cover its attributable costs, make a positive contribution to cover institutional costs, and increase

[1] Request of the United States Postal Service to Add Parcel Select and Parcel Return Service Contract 4 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, June 13, 2012 (Request).

contribution toward the requisite 5.5 percent of the Postal Service's institutional costs. *Id.*, Attachment D at 1. Mr. Nicoski contends that there will be no issue of subsidization of market dominant products by competitive products as a result of the instant contract. *Id.*

Instant contract. The Postal Service included a redacted version of the instant contract with the Request. *Id.*, Attachment B. It is scheduled to become effective on the day the Commission issues all necessary regulatory approvals. *Id.*, Attachment B at 3. The contract will expire 3 years from the effective date unless, among other things, either party terminates the agreement with 30 days written notice to the other party. *Id.* The Postal Service represents that the instant contract is consistent with 39 U.S.C. 3633. *Id.*, Attachment E.

The Postal Service filed much of its supporting materials, including the unredacted version of the instant contract, under seal. *Id.*, Attachment F. It maintains that the unredacted Governors' Decision, the unredacted version of the instant contract, and supporting documents establishing compliance with 39 U.S.C. 3633 and 39 CFR 3015.5 should remain confidential. Request at 1. The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.*

II. Notice of Filings

The Commission establishes Docket Nos. MC2012–25 and CP2012–33 to consider the Request and the instant contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in these dockets are consistent with the policies of 39 U.S.C. 3632, 3633, and 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than June 25, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Natalie Rea Ward to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2012–25 and CP2012–33 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Natalie Rea Ward is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than June 25, 2012.

4. The Secretary shall arrange for publication of this order in the **Federal Register.**

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–14959 Filed 6–19–12; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Parcel Select and Parcel Return Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: June 20, 2012.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 13, 2012, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Parcel Select & Parcel Return Service Contract 4 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2012–25, CP2012–33.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–14936 Filed 6–19–12; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 10f–3; SEC File No. 270–237; OMB Control No. 3235–0226.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information discussed below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

Section 10(f) of the Investment Company Act of 1940 (the ''Act'') prohibits a registered investment company (''fund'') from purchasing any security during an underwriting or selling syndicate if the fund has certain relationships with a principal underwriter for the security.[1] Congress enacted this provision in 1940 to protect funds and their shareholders by preventing underwriters from ''dumping'' unmarketable securities on affiliated funds.

Rule 10f–3 permits a fund to engage in a securities transaction that otherwise would violate Section 10(f) if, among other things: (i) Each transaction effected under the rule is reported on Form N–SAR; (ii) the fund's directors have approved procedures for purchases made in reliance on the rule, regularly review fund purchases to determine whether they comply with these procedures, and approve necessary changes to the procedures; and (iii) a written record of each transaction effected under the rule is maintained for six years, the first two of which in an easily accessible place.[2] The written record must state: (i) From whom the securities were acquired; (ii) the identity of the underwriting syndicate's members; (iii) the terms of the transactions; and (iv) the information or materials on which the fund's board of directors has determined that the purchases were made in compliance with procedures established by the board.

Rule 10f–3 also conditionally allows managed portions of fund portfolios to purchase securities offered in otherwise off-limits primary offerings. To qualify for this exemption, rule 10f–3 requires that the subadviser that is advising the purchaser be contractually prohibited from providing investment advice to any other portion of the fund's portfolio and consulting with any other of the fund's advisers that is a principal underwriter or affiliated person of a principal underwriter concerning the fund's securities transactions.

These requirements provide a mechanism for fund boards to oversee compliance with the rule. The required recordkeeping facilitates the

[1] 15 U.S.C. 80a–10(f).

[2] 17 CFR 270.10f–3.

Commission staff's review of rule 10f–3 transactions during routine fund inspections and, when necessary, in connection with enforcement actions.

The staff estimates that approximately 300 funds engage in a total of approximately 3,700 rule 10f–3 transactions each year.[3] Rule 10f–3 requires that the purchasing fund create a written record of each transaction that includes, among other things, from whom the securities were purchased and the terms of the transaction. The staff estimates[4] that it takes an average fund approximately 30 minutes per transaction and approximately 1,850 hours[5] in the aggregate to comply with this portion of the rule.

The funds also must maintain and preserve these transactional records in accordance with the rule's recordkeeping requirement, and the staff estimates that it takes a fund approximately 20 minutes per transaction and that annually, in the aggregate, funds spend approximately 1,233 hours[6] to comply with this portion of the rule.

In addition, fund boards must, no less than quarterly, examine each of these transactions to ensure that they comply with the fund's policies and procedures. The information or materials upon which the board relied to come to this determination also must be maintained and the staff estimates that it takes a fund 1 hour per quarter and, in the aggregate, approximately 1,200 hours[7] annually to comply with this rule requirement.

The staff estimates that reviewing and revising as needed written procedures for rule 10f–3 transactions takes, on average for each fund, two hours of a compliance attorney's time per year.[8] Thus, annually, in the aggregate, the staff estimates that funds spend a total of approximately 600 hours[9] on monitoring and revising rule 10f–3 procedures.

Based on an analysis of fund filings, the staff estimates that approximately 775 fund portfolios enter into subadvisory agreements each year.[10] Based on discussions with industry representatives, the staff estimates that it will require approximately 3 attorney hours to draft and execute additional clauses in new subadvisory contracts in order for funds and subadvisers to be able to rely on the exemptions in rule 10f–3. Because these additional clauses are identical to the clauses that a fund would need to insert in their subadvisory contracts to rely on rules 12d3–1, 17a–10, and 17e–1, and because we believe that funds that use one such rule generally use all of these rules, we apportion this 3 hour time burden equally to all four rules. Therefore, we estimate that the burden allocated to rule 10f–3 for this contract change would be 0.75 hours.[11] Assuming that all 775 funds that enter into new subadvisory contracts each year make the modification to their contract required by the rule, we estimate that the rule's contract modification requirement will result in 581 burden hours annually.[12]

The staff estimates, therefore, that rule 10f–3 imposes an information collection burden of 5,665 hours.[13] This estimate does not include the time spent filing transaction reports on Form N–SAR, which is encompassed in the information collection burden estimate for that form.

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: *PRA_Mailbox@sec.gov*.

Dated: June 14, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14948 Filed 6–19–12; 8:45 am]

BILLING CODE P

[3] These estimates are based on staff extrapolations from filings with the Commission.

[4] Unless stated otherwise, the information collection burden estimates are based on conversations between the staff and representatives of funds.

[5] This estimate is based on the following calculation: (0.5 hours × 3,700 = 1,850 hours).

[6] This estimate is based on the following calculations: (20 minutes × 3,700 transactions = 74,000 minutes; 74,000 minutes/60 = 1,233 hours).

[7] This estimate is based on the following calculation: (1 hour per quarter × 4 quarters × 300 funds = 1,200 hours).

[8] These averages take into account the fact that in most years, fund attorneys and boards spend little or no time modifying procedures and in other years, they spend significant time doing so.

[9] This estimate is based on the following calculation: (300 funds × 2 hours = 600 hours).

[10] Based on information in Commission filings, we estimate that 44.4 percent of funds are advised by subadvisers.

[11] This estimate is based on the following calculation (3 hours ÷ 4 rules = .75 hours).

[12] These estimates are based on the following calculations: (0.75 hours × 775 portfolios = 581 burden hours).

[13] This estimate is based on the following calculation: (1,850 hours + 1,233 hours + 1,200 hours + 600 hours + 581 hours + 201 hours = 5,665 total burden hours).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30103; File No. 812–14008]

Versus Capital Multi-Manager Real Estate Income Fund LLC and Versus Capital Advisors; Notice of Application

June 14, 2012.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(c) and 18(i) of the Act, under sections 6(c) and 23(c)(3) of the Act for an exemption from rule 23c–3 under the Act, and for an order pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares and to impose asset-based distribution fees and early withdrawal charges (''EWCs'').

APPLICANTS: Versus Capital Multi-Manager Real Estate Income Fund LLC (''Initial Fund'') and Versus Capital Advisors LLC (''Adviser'').

FILING DATES: The application was filed on February 23, 2012, and amended on April 30, 2012 and June 8, 2012.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 9, 2012 and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be

notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, c/o Mark D. Quam, Versus Capital Advisors LLC, 7100 E. Belleview Avenue, Suite 306, Greenwood Village, CO 80111–1632.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 551–6812 or David P. Bartels, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Initial Fund is a recently-formed Delaware limited liability company that is registered under the Act as a non-diversified, closed-end management investment company. The Initial Fund attempts to achieve its objectives by investing in funds that invest indirectly in real estate and by retaining institutional asset managers to sub-advise assets invested in real estate securities.

2. The Adviser is a Delaware limited liability company and is registered as an investment adviser under the Investment Advisers Act of 1940. The Adviser serves as investment adviser to the Initial Fund.

3. The Applicants seek an order to permit the Initial Fund to issue multiple classes of shares, each having its own fee and expense structure, and to impose asset-based distribution fees and EWCs.

4. Applicants request that the order also apply to any continuously-offered registered closed-end management investment company that has been previously organized or that may be organized in the future for which the Adviser or any entity controlling, controlled by, or under common control with the Adviser, or any successor in interest to any such entity,[1] acts as investment adviser and which operates as an interval fund pursuant to rule 23c–3 under the Act or provides periodic liquidity with respect to its shares pursuant to rule 13e–4 under the Securities Exchange Act of 1934 (''Exchange Act'') (together with the Initial Fund, the ''Funds'').[2]

5. The Initial Fund is currently making an initial public offering of its common shares following the effectiveness of its registration statement. The Initial Fund anticipates that it will commence a continuous public offering of its common shares within one year following the completion of its initial registration under the Securities Act of 1933 (''Securities Act''). Applicants state that additional offerings by any Fund relying on the order may be on a private placement or public offering basis. Shares of the Funds will not be listed on any securities exchange, nor quoted on any quotation medium. The Funds do not expect there to be a secondary trading market for their shares.

6. If the requested relief is granted, the Initial Fund intends to redesignate its common shares as ''Class F Shares'' and to continuously offer two additional classes of shares (''Class I Shares'' and ''Class Y Shares''). Because of the different distribution fees, services and any other class expenses that may be attributable to the Class F Shares, Class I and Class Y Shares, the net income attributable to, and the dividends payable on, each class of shares may differ from each other.

7. Applicants state that, from time to time, the Initial Fund may create additional classes of shares, the terms of which may differ from the Class F, Class I and Class Y Shares in the following respects: (i) The amount of fees permitted by different distribution plans or different service fee arrangements; (ii) voting rights with respect to a distribution plan of a class; (iii) different class designations; (iv) the impact of any class expenses directly attributable to a particular class of shares allocated on a class basis as described in this application; (v) any differences in dividends and net asset value resulting from differences in fees under a distribution plan or in class expenses; (vi) any EWC or other sales load structure; and (vii) exchange or conversion privileges of the classes as permitted under the Act.

8. Applicants state that the Initial Fund has adopted a fundamental policy to repurchase a specified percentage of its shares (no less than 5%) at net asset value on a quarterly basis. Such repurchase offers will be conducted pursuant to rule 23c–3 under the Act. Each of the other Funds will likewise adopt fundamental investment policies in compliance with rule 23c–3 and make quarterly repurchase offers to its shareholders or provide periodic liquidity with respect to its shares pursuant to rule 13e–4 under the Exchange Act.[3] Any repurchase offers made by the Funds will be made to all holders of shares of each such Fund.

9. Applicants represent that any asset-based service and distribution fees for each class of shares will comply with the provisions of NASD Rule 2830(d) (''NASD Sales Charge Rule'').[4] Applicants also represent that each Fund will disclose in its prospectus, the fees, expenses and other characteristics of each class of shares offered for sale by the prospectus, as is required for open-end multiple class funds under Form N–1A. As is required for open-end funds, each Fund will disclose its expenses in shareholder reports, and disclose any arrangements that result in breakpoints in or elimination of sales loads in its prospectus.[5] In addition, applicants will comply with applicable enhanced fee disclosure requirements for fund of funds, including registered funds of hedge funds.[6]

10. Each of the Funds will comply with any requirements that the Commission or FINRA may adopt regarding disclosure at the point of sale and in transaction confirmations about the costs and conflicts of interest arising out of the distribution of open-end investment company shares, and regarding prospectus disclosure of sales loads and revenue sharing arrangements, as if those requirements applied to the Fund. In addition, each Fund will contractually require that any

[1] A successor in interest is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[2] Any Fund relying on this relief in the future will do so in a manner consistent with the terms and conditions of the application. Applicants represent that each entity presently intending to rely on the requested relief is listed as an applicant.

[3] Applicants submit that rule 23c–3 and Regulation M under the Exchange Act permit an interval fund to make repurchase offers to repurchase its shares while engaging in a continuous offering of its shares pursuant to Rule 415 under the Securities Act.

[4] Any reference to the NASD Sales Charge Rule includes any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority (''FINRA'').

[5] *See* Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Investment Company Act Release No. 26372 (Feb. 27, 2004) (adopting release) (requiring open-end investment companies to disclose fund expenses in shareholder reports); and Disclosure of Breakpoint Discounts by Mutual Funds, Investment Company Act Release No. 26464 (June 7, 2004) (adopting release) (requiring open-end investment companies to provide prospectus disclosure of certain sales load information).

[6] Fund of Funds Investments, Investment Company Act Rel. Nos. 26198 (Oct. 1 2003) (proposing release) and 27399 (Jun. 20, 2006) (adopting release). See also Rules 12d1–1, *et seq.* of the Act.

distributor of the Fund's shares comply with such requirements in connection with the distribution of such Fund's shares.

11. Each Fund will allocate all expenses incurred by it among the various classes of shares based on the net assets of the Fund attributable to each class, except that the net asset value and expenses of each class will reflect distribution fees, service fees, and any other incremental expenses of that class. Expenses of the Fund allocated to a particular class of shares will be borne on a pro rata basis by each outstanding share of that class. Applicants state that each Fund will comply with the provisions of rule 18f–3 under the Act as if it were an open-end investment company.

12. Each Fund may impose an EWC on shares submitted for repurchase that have been held less than a specified period and may waive the EWC for certain categories of shareholders or transactions to be established from time to time. Each of the Funds will apply the EWC (and any waivers or scheduled variations of the EWC) uniformly to all shareholders in a given class and consistently with the requirements of rule 22d–1 under the Act as if the Funds were open-end investment companies.

13. Each Fund operating as an interval fund pursuant to rule 23c–3 under the Act may offer its shareholders an exchange feature under which the shareholders of the Fund may, in connection with the Fund's periodic repurchase offers, exchange their shares of the Fund for shares of the same class of (i) registered open-end investment companies or (ii) other registered closed-end investment companies that comply with rule 23c–3 under the Act and continuously offer their shares at net asset value, that are in the Fund's group of investment companies (collectively, ''Other Funds''). Shares of a Fund operating pursuant to rule 23c–3 that are exchanged for shares of Other Funds will be included as part of the amount of the repurchase offer amount for such Fund as specified in rule 23c–3 under the Act. Any exchange option will comply with rule 11a–3 under the Act, as if the Fund were an open-end investment company subject to rule 11a–3. In complying with rule 11a–3, each Fund will treat an EWC as if it were a contingent deferred sales load (''CDSL'').

Applicants' Legal Analysis

Multiple Classes of Shares

1. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of shares of the Funds may be prohibited by section 18(c), as a class may have priority over another class as to payment of dividends because shareholders of different classes would pay different fees and expenses.

2. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that multiple classes of shares of the Funds may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule thereunder, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) from sections 18(c) and 18(i) to permit the Funds to issue multiple classes of shares.

4. Applicants submit that the proposed allocation of expenses and voting rights among multiple classes is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit a Fund to facilitate the distribution of its shares and provide investors with a broader choice of shareholder services. Applicants assert that the proposed closed-end investment company multiple class structure does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f–3 under the Act. Applicants state that each Fund will comply with the provisions of rule 18f–3 as if it were an open-end investment company.

Early Withdrawal Charges

1. Section 23(c) of the Act provides, in relevant part, that no registered closed-end investment company will purchase securities of which it is the issuer, except: (a) On a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

2. Rule 23c–3 under the Act permits a registered closed-end investment company (an ''interval fund'') to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the interval fund. Rule 23c–3(b)(1) under the Act provides that an interval fund may deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is paid to the interval fund and is reasonably intended to compensate the fund for expenses directly related to the repurchase.

3. Section 23(c)(3) provides that the Commission may issue an order that would permit a closed-end investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased.

4. Applicants request relief under sections 6(c), discussed above, and 23(c)(3) from rule 23c–3 to the extent necessary for the Funds to impose EWCs on shares of the Funds submitted for repurchase that have been held for less than a specified period.

5. Applicants state that the EWCs they intend to impose are functionally similar to CDSLs imposed by open-end investment companies under rule 6c–10 under the Act. Rule 6c–10 permits open-end investment companies to impose CDSLs, subject to certain conditions. Applicants note that rule 6c–10 is grounded in policy considerations supporting the employment of CDSLs where there are adequate safeguards for the investor and state that the same policy considerations support imposition of EWCs in the interval fund context. In addition, applicants state that EWCs may be necessary for the distributor to recover distribution costs. Applicants represent that any EWC imposed by the Funds will comply with rule 6c–10 under the Act as if the rule were applicable to closed-end investment companies. The Funds will disclose EWCs in accordance with the requirements of Form N–1A concerning CDSLs. Applicants further state that the Funds will apply the EWC (and any waivers or scheduled variations of the EWC) uniformly to all shareholders in a given class and consistently with the requirements of rule 22d–1 under the Act.

Asset-based Distribution Fees

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b–1 under the Act. Applicants request an order under section 17(d) and rule 17d–1 under the Act to the extent necessary to permit the Fund to impose asset-based distribution fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies, which they believe will resolve any concerns that might arise in connection with a Fund financing the distribution of its shares through asset-based distribution fees.

For the reasons stated above, applicants submit that the exemptions requested under section 6(c) are necessary and appropriate in the public interest and are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants further submit that the relief requested pursuant to section 23(c)(3) will be consistent with the protection of investors and will insure that applicants do not unfairly discriminate against any holders of the class of securities to be purchased. Finally, applicants state that the Funds' institution of asset-based distribution fees is consistent with the provisions, policies and purposes of the Act and does not involve participation on a basis different from or less advantageous than that of other participants.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Each Fund relying on the order will comply with the provisions of rules 6c–10, 12b–1, 17d–3, 18f–3, 22d–1, and, where applicable, 11a–3 under the Act, as amended from time to time, as if those rules applied to closed-end management investment companies, and will comply with the NASD Sales Charge Rule, as amended from time to time, as if that rule applied to all closed-end management investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–15059 Filed 6–19–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67201; File No. SR–ISE–2012–49]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Fees for Certain Regular Orders Executed on the Exchange

June 14, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 1, 2012, the International Securities Exchange, LLC (the ''ISE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend fees for certain regular orders executed on the Exchange. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend fees charged by the Exchange for certain regular orders in 25 securities traded on the Exchange (''Special Non-Select Penny Pilot Symbols'').[3] For trading in the Special Non-Select Penny Pilot Symbols, the Exchange currently charges $0.20 per contract for Firm Proprietary orders and Customer (Professional) [4] orders, and $0.45 per contract for Non-ISE Market Maker [5] orders. ISE Market Maker orders [6] in these symbols are subject to a sliding scale, ranging from $0.01 per contract to $0.18 per contract, depending on the amount of overall volume traded by a Market Maker during a month. Market Makers also currently pay a payment for order flow

[3] The Special Non-Select Penny Pilot Symbols are Peabody Energy Corp. (''BTU''), Cliffs Natural Resources Inc. (''CLF''), Salesforce.com Inc. (''CRM''), ChevronTexaco Corporation (''CVX''), Deere & Company (''DE''), eBay Inc. (''EBAY''), FedEx Corp. (''FDX''), Corning Incorporated (''GLW''), General Motors Co. (''GM''), Green Mountain Coffee Roasters Inc. (''GMCR''), The Goldman Sachs Group Inc. (''GS''), The Home Depot Inc. (''HD''), Lululemon Athletica Inc. (''LULU''), Molycorp Inc. (''MCP''), McMoRan Exploration Co. (''MMR''), Mosaic Company (''MOS''), Merck & Co. Inc. (''MRK''), Sears Holding Corporation (''SHLD''), Sina Corp. (''SINA''), Silver Wheaton Corp. (''SLW''), United Parcel Service Inc. (''UPS''), U.S. Bancorp (''USB''), Wynn Resorts Limited (''WYNN''), streetTracks Homebuilders Fund (''XHB'') and Technology Select Sector SPDR Fund (''XLK''). The Special Non-Select Penny Pilot Symbols are identified by their ticker symbol on the Exchange's Schedule of Fees.

[4] A Customer (Professional) is a person who is not a broker/dealer and is not a Priority Customer.

[5] A Non-ISE Market Maker, or Far Away Market Maker (''FARMM''), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended (''Exchange Act''), registered in the same options class on another options exchange.

[6] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* ISE Rule 100(a)(25).

(''PFOF'') fee of $0.25 per contract when trading against Priority Customers.[7] Priority Customer orders are not charged for trading in the Special Non-Select Penny Pilot Symbols. The Exchange also currently charges the fees noted above for responses to special orders in the Special Non-Select Penny Pilot Symbols. The Exchange also currently charges the fees noted above for crossing orders, i.e., orders executed in the Exchange's Facilitation Mechanism,[8] Solicited Order Mechanism,[9] Block Order Mechanism and Price Improvement Mechanism,[10] and for Qualified Contingent Cross orders, in the Special Non-Select Penny Pilot Symbols, except for Non-ISE Market Maker orders, for which the Exchange currently charges $0.20 per contract.

The Exchange currently assesses per contract transaction fees and provides rebates to market participants that add or remove liquidity from the Exchange (''maker/taker fees and rebates'') in a number of options classes (the ''Select Symbols'').[11] The Exchange's maker/taker fees and rebates are applicable to regular and complex orders executed in the Select Symbols. The Exchange also currently assesses maker/taker fees and rebates for complex orders in symbols that are in the Penny Pilot program but are not a Select Symbol (''Non-Select Penny Pilot Symbols'') [12] and for complex orders in all symbols that are not in the Penny Pilot Program (''Non-Penny Pilot Symbols'').[13] As noted above, maker/taker fees and rebates applicable on the above symbols are assessed on the following order-type categories: ISE Market Maker, Market Maker Plus,[14] Firm Proprietary, Customer (Professional), Non-ISE Market Maker, and Priority Customer.

The Exchange now proposes to adopt maker/taker fees and rebates to regular orders in the Special Non-Select Penny Pilot Symbols. Specifically, the Exchange proposes to adopt the following fees and rebates for orders that trade against Non-Priority Customer orders:

- For Market Maker orders, a maker fee of $0.35 per contract and a taker fee of $0.20 per contract;
- For Non-ISE Market Maker orders, a maker fee of $0.40 per contract and a taker fee of $0.35 per contract;
- For Firm Proprietary and Customer (Professional) orders, a maker fee of $0.35 per contract and a taker fee of $0.25 per contract;
- For Priority Customer orders, a maker rebate of $0.25 per contract and a taker rebate of $0.32 per contract.

Additionally, the Exchange proposes to adopt the following fees and rebates for orders that trade against Priority Customer orders:

- For Market Maker orders, a maker fee of $0.35 per contract and a taker fee of $0.30 per contract;
- For Non-ISE Market Maker orders, a maker and taker fee of $0.40 per contract;
- For Firm Proprietary and Customer (Professional) orders, a maker fee of $0.35 per contract and a taker fee of $0.30 per contract;
- For Priority Customer orders, a maker rebate of $0.25 per contract and a taker fee of $0.00 per contract.

For crossing regular orders in the Special Non-Select Penny Pilot Symbols, the Exchange proposes to continue charging a fee of $0.20 per contract. The Exchange currently does not charge Priority Customers for crossing orders executed in the Special Non-Select Penny Pilot Symbols and proposes to continue not charging Priority Customers for crossing orders executed in the Special Non-Select Penny Pilot Symbols.

For responses to special orders in the Special Non-Select Penny Pilot Symbols,[15] the Exchange proposes to adopt a fee of $0.40 per contract for Market Maker, Non-ISE Market Maker, Firm Proprietary and Customer (Professional) and Priority Customer orders.

The Exchange currently provides ISE Market Makers with a two cent discount when trading against Priority Customer orders that are preferenced to them in the complex order book.[16] The Exchange proposes to extend this discount for preferenced regular orders in the Special Non-Select Penny Pilot Symbols. Accordingly, ISE Market Makers who take liquidity when trading against Priority Customer orders that are preferenced to them in the Special Non-Select Penny Pilot Symbols will be charged $0.28 per contract and ISE Market Makers who make liquidity when trading against Priority Customer orders that are preferenced to them in the Special Non-Select Penny Pilot Symbols will be charged $0.33 per contract.

Additionally, to incentivize members to trade in the Exchange's various auction mechanisms, the Exchange currently provides a per contract rebate to those contracts that do not trade with the contra order in the Exchange's Facilitation Mechanism and Solicited Order Mechanism, except when they trade against pre-existing orders and quotes, and to those contracts that do not trade with the contra order in the Price Improvement Mechanism. For the Facilitation and Solicited Order Mechanisms, the rebate is currently $0.15 per contract. For the Price Improvement Mechanism, the rebate is currently $0.25 per contract. The

[7] A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[8] *See* Exchange Act Release No. 61869 (April 7, 2010), 75 FR 19449 (April 14, 2010) (SR–ISE–2010–25).

[9] *See* Exchange Act Release No. 63283 (November 9, 2010), 75 FR 70059 (November 16, 2010) (SR–ISE–2010–106).

[10] *See* Exchange Act Release No. 62048 (May 6, 2010), 75 FR 26830 (May 12, 2010) (SR–ISE–2010–43). The Exchange subsequently increased this rebate to $0.25 per contract. *See* Exchange Act Release No. 63283 (November 9, 2010), 75 FR 70059 (November 16, 2010) (SR–ISE–2010–106).

[11] Options classes subject to maker/taker fees are identified by their ticker symbol on the Exchange's Schedule of Fees.

[12] *See* Exchange Act Release No. 65724 (November 10, 2011), 76 FR 71413 (November 17, 2011) (SR–ISE–2011–72).

[13] *See* Exchange Act Release Nos. 66084 (January 3, 2012), 77 FR 1103 (January 9, 2012) (SR–ISE–2011–84); 66392 (February 14, 2012), 77 FR 10016 (February 21, 2012) (SR–ISE–2012–06); and 66961 (May 10, 2012), 77 FR 28914 (May 16, 2012) (SR–ISE–2012–38).

[14] A Market Maker Plus is an ISE Market Maker who is on the National Best Bid or National Best Offer 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium in each of the front two expiration months and 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium across all expiration months in order to receive the rebate. The Exchange determines whether a Market Maker qualifies as a Market Maker Plus at the end of each month by looking back at each Market Maker's quoting statistics during that month. A Market Maker's single best and single worst overall quoting days each month, on a per symbol basis, are excluded in calculating whether a Market Maker qualifies for this rebate, if doing so qualifies a Market Maker for the rebate. If at the end of the month, a Market Maker meets the Exchange's stated criteria, the Exchange rebates $0.10 per contract for transactions executed by that Market Maker during that month. The Exchange provides Market Makers a report on a daily basis with quoting statistics so that Market Makers can determine whether or not they are meeting the Exchange's stated criteria.

[15] A response to a special order is any contra-side interest submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism and Price Improvement Mechanism. This fee applies to Market Maker, Non-ISE Market Maker, Firm Proprietary and Customer (Professional) interest.

[16] Pursuant to SR–ISE–2011–81, the Exchange provides this fee discount when ISE Market Makers add or remove liquidity. *See* Exchange Act Release No. 65958 (December 15, 2011) 76 FR 79236 (December 21, 2011) (SR–ISE–2011–81).

Exchange proposes to extend this rebate incentive for regular orders in the Special Non-Select Penny Pilot Symbols by adopting a per contract rebate at the current levels to those contracts in the Special Non-Select Penny Pilot Symbols that do not trade with the contra order in the Exchange's Facilitation Mechanism and Solicited Order Mechanism except when they trade against pre-existing orders and quotes and in the Price Improvement Mechanism.

Currently, Primary Market Makers (PMMs) are required to provide away market price protection for marketable public customer orders when the ISE market is not at the NBBO in accordance with their obligations under ISE rules and the Intermarket Linkage Plan.[17] Accordingly, when PMMs are performing this intermarket price protection function, the Exchange currently charges PMMs a fee ranging from $0.01 per contract to $0.18 per contract for PMM trade reports. Since the PMM is performing its linkage obligations when it executes (i.e., ''trade reports'') such public customer orders, it is neither a taker nor maker of liquidity as those terms are used within the framework of the ISE's maker/taker pricing model. Accordingly, the Exchange proposes to not charge any fees or provide any rebates for PMM trade reports for executions in the Special Non-Select Penny Pilot Symbols. The Exchange currently does not charge a trade report fee to PMMs in symbols that are subject to maker/taker fees and rebates.

With the proposed migration of regular orders in the Special Non-Select Penny Pilot Symbols to maker/taker and rebate pricing, the Exchange proposes to no longer charge a PFOF fee in the Special Non-Select Penny Pilot Symbols. The cancellation fee, however, which only applies to Priority Customer orders, will continue to apply.

As the Exchange is proposing to adopt a new table for this proposed fee change, the Exchange notes that:

- Fees for regular orders in the Special Non-Select Penny Pilot Symbols executed in the Exchange's Facilitation, Solicited Order, Price Improvement and Block Order Mechanisms are for contracts that are part of the originating or contra order.
- As noted above, PFOF fees will not be collected in the Special Non-Select Penny Pilot Symbols.
- As noted above, the cancellation fee, which only applies to Priority Customer orders, will continue to apply to the Special Non-Select Penny Pilot Symbols.
- The Exchange currently has a fee cap, with certain exclusions, applicable to crossing transactions executed in a member's proprietary account. The cap also applies to transactions for the account of entities affiliated with a member. The Exchange also has a service fee applicable to all QCC and non-QCC transactions that are eligible for the fee cap.[18] This fee cap will continue to apply to executions of regular orders in the Special Non-Select Penny Pilot Symbols.
- The Exchange currently has tiered rebates to encourage members to submit greater numbers of QCC orders and Solicitation orders to the Exchange. Once a member reaches a certain volume threshold in QCC orders and/or Solicitation orders during a month, the Exchange provides a rebate to that member for all of its QCC and Solicitation traded contracts for that month.[19] These tiered rebates will continue to apply to contracts traded in the Special Non-Select Penny Pilot Symbols.
- The Exchange currently has a $0.20 per contract fee for Market Maker orders sent to the Exchange by EAMs in the Special Non-Select Penny Pilot Symbols.[20] Market Maker orders in the Special Non-Select Penny Pilot Symbols sent to the Exchange by Electronic Access Members will be assessed a fee of $0.35 per contract for making liquidity when trading against Non-Priority Customer and Priority Customer interest, $0.20 per contract for taking liquidity when trading against Non-Priority Customer interest, $0.30 per contract for taking liquidity when trading against Priority Customer orders, $0.20 per contract for crossing orders and $0.40 per contract for responses to special orders.
- The Exchange currently provides a $0.20 per contract fee credit for executions in the Special Non-Select Penny Pilot Symbols resulting from responses to Customer (Professional) orders that are ''flashed'' by the Exchange to its Members. This fee credit shall continue to apply.
- The Exchange currently provides a $0.20 per contract fee credit to Primary Market Makers (PMM) for execution of Priority Customer orders—for classes in which it serves as a PMM—that send an Intermarket Sweep Order to other exchanges. This fee credit shall continue to apply.
- The Exchange currently has a $0.45 per contract fee for execution of Customer (Professional) orders in the Special Non-Select Penny Pilot Symbols that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan. This fee shall continue to apply.
- The Exchange currently provides PMMs a fee credit equal to the fee charged by a destination market, but not more than $0.45 per contract for executing Professional (Customer) orders in the Special Non-Select Penny Pilot Symbols. This fee credit shall continue to apply.

With this proposed rule change, all non-customer orders will be assessed similar fees, thus eliminating the gap that currently exists, largely due to PFOF fees, between Market Makers and non-Market Makers when trading today. The proposed fees are consistent with the fees and rates of payment for order flow commonly applied to symbols that are part of the Penny Pilot program. The Exchange's maker/taker fees and rebates for complex orders have proven to be an effective method of attracting order flow to the Exchange. The Exchange believes that extending its maker/taker fees and rebates to regular orders in the Special Non-Select Penny Pilot Symbols will strengthen its market share in these products. The Exchange believes this proposed rule change will also serve to enhance its competitive position and enable it to attract additional volume in these symbols.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Exchange Act[21] in general, and furthers the objectives of Section 6(b)(4) of the Exchange Act[22] in particular, in that it is an equitable allocation of reasonable

[17] The Intermarket Linkage Plan prohibits an exchange from allowing the automatic execution of public customer orders at a price that is inferior to the best prices being publically displayed by another exchange. Under ISE Rule 803(c)(2), it is the responsibility of the PMM to either execute an order at a price that matches or betters the NBBO, or obtain such better prices on behalf of the public customer.

[18] *See* Securities Exchange Act Release Nos. 64270 (April 8, 2011), 76 FR 20754 (April 13, 2011) (SR–ISE–2011–13); and 66793 (April 12, 2012), 77 FR 23313 (April 18, 2012) (SR–ISE–2012–27).

[19] *See* Securities Exchange Act Release Nos. 65087 (August 10, 2011), 76 FR 50783 (August 16, 2011) (SR–ISE–2011–47); 65583 (October 18, 2011), 76 FR 65555 (October 21, 2011) (SR–ISE–2011–68); 65705 (November 8, 2011), 76 FR 70789 (November 15, 2011) (SR–ISE–2011–70); 65898 (December 6, 2011), 76 FR 77279 (December 12, 2011) (SR–ISE–2011–78); 66169 (January 17, 2012), 77 FR 3295 (January 23, 2012) (SR–ISE–2012–01); and 66790 (April 12, 2012), 77 FR 23312 (April 18, 2012) (SR–ISE–2012–25).

[20] *See* Securities Exchange Act Release No. 60817 (October 13, 2009), 74 FR 54111 (October 21, 2009).

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(4).

dues, fees and other charges among Exchange members and other persons using its facilities. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, most important of which will be its propensity to add or remove liquidity in the Special Non-Select Penny Pilot Symbols.

The Exchange believes it is reasonable and equitable to charge a maker fee of $0.35 per contract for regular Market Maker, Firm Proprietary and Customer (Professional) orders that trade against Priority Customer and Non-Priority Customer interest in the Special Non-Select Penny Pilot Symbols and $0.40 per contract for regular Non-ISE Market Maker orders that trade against Priority Customer and Non-Priority Customer interest in the Special Non-Select Penny Pilot Symbols. The Exchange notes the proposed fees are comparable to fees currently in place at other exchange for Penny Pilot Symbols.[23]

The Exchange believes it is reasonable and equitable to charge a taker fee of $0.20 per contract for regular Market Maker orders, $0.25 per contract for regular Firm Proprietary and Customer (Professional) orders, and $0.35 per contract for regular Non-ISE Market Maker orders in the Special Non-Select Penny Pilot Symbols that trade against Non-Priority Customer interest. The Exchange also believes it is reasonable and equitable to charge a taker fee of $0.30 per contract for regular Market Maker, Firm Proprietary and Customer (Professional) orders and $0.40 per contract for regular Non-ISE Market Maker orders in the Special Non-Select Penny Pilot Symbols that trade against Priority Customer interest. Again, the Exchange notes the proposed fees are comparable to fees currently in place at other exchanges.[24]

The Exchange further notes that the proposed $0.35 per contract maker fee for Market Maker, Firm Proprietary and Customer (Professional) orders in the Special Non-Select Penny Pilot Symbols remains lower than that charged by the Boston Options Exchange (''BOX''). For a similar order, BOX charges both a transaction fee, which ranges anywhere from $0.20 per contract to $0.40 per contract, and a fee of $0.22 per contract for adding liquidity in these classes, for an 'all-in' rate of as high as $0.62 per contract.[25]

The Exchange believes it is reasonable and equitable to charge ISE Market Maker, Non-ISE Market Maker, Firm Proprietary and Customer (Professional) orders a fee of $0.40 per contract when such members are responding to special orders in the Special Non-Select Penny Pilot Symbols because these fees are identical to the fees the Exchange currently charges for responses to special orders in the Select Symbols.[26]

In particular, the Exchange believes the proposed fees are reasonable and equitably allocated because they are within the range of fees assessed by other exchanges employing similar pricing schemes. In addition, the Exchange believes that charging Non-ISE Market Maker orders a higher rate than the fee charged to ISE Market Maker, Firm Proprietary and Customer (Professional) orders is appropriate and not unfairly discriminatory because Non-ISE Market Makers are not subject to many of the non-transaction based fees that these other categories of membership are subject to, e.g., membership fees, access fees, API/Session fees, market data fees, etc. Therefore, it is appropriate and not unfairly discriminatory to assess a higher transaction fee on Non-ISE Market Makers because the Exchange incurs costs associated with these types of orders that are not recovered by non-transaction based fees paid by members.

The Exchange further believes it is reasonable and equitable for the Exchange to charge a fee of $0.20 per contract for regular orders in the Special Non-Select Penny Pilot Symbols executed in the Exchange's various auctions and for Qualified Contingent Cross orders because these fees are identical to the fees the Exchange currently charges for similar orders in the symbols that are subject to the Exchange's maker/taker fees.

The Exchange believes that it is reasonable and equitable to provide rebates for regular Priority Customer orders in the Special Non-Select Penny Pilot Symbols because paying a rebate would attract additional order flow to the Exchange and create additional liquidity in these symbols, which the Exchange believes ultimately will benefit all market participants who trade on ISE. The Exchange already has a number of similar rebate programs in place. The Exchange believes that the proposed rebates are competitive with rebates provided by other exchanges and are therefore reasonable and equitably allocated to those members that direct orders to the Exchange rather than to a competing exchange.

The Exchange believes it is reasonable and equitable to provide a two cent discount to ISE Market Makers on preferenced orders as an incentive for them to quote more aggressively in the Special Non-Select Penny Pilot Symbols and thereby create more trading opportunities on the Exchange. ISE currently provides Market Makers a similar two cent discount for preferenced complex orders in the Select Symbols, Non-Select Penny Pilot Symbols and Non-Penny Pilot Symbols and is now proposing to extend the same discount for preferenced regular orders in the Special Non-Select Penny Pilot Symbols. ISE notes that with this proposed fee change, the Exchange will maintain the two cent differential that is currently in place for preferenced complex orders in the group of symbols noted above.

The Exchange believes that adopting maker/taker fees and rebates for regular orders in the Special Non-Select Penny Pilot Symbols will attract additional business in these symbols to the Exchange. The Exchange further believes that the proposed fees are not unfairly discriminatory because the fee structure is consistent with fee structures that exist today at other options exchanges. Additionally, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory because they are consistent with price differentiation that exists today at other option exchanges. The Exchange believes it remains an attractive venue for market participants to trade as its fees remain competitive with those charged by other exchanges for similar trading strategies. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. With this proposed fee change, the Exchange believes it remains an attractive venue for market participants to trade at favorable prices.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

[23] *See* NASDAQ OMX PHLX LLC Pricing Schedule at *http://nasdaqomxtrader.com/content/marketregulation/membership/phlx/feesched.pdf.*

[24] *Id.*

[25] *See* BOX Fee Schedule.

[26] *See* ISE Schedule of Fees, Rebates and Fees for Adding and Removing Liquidity in Select Symbols and Complex Order Maker/Taker fees for symbols that are in the Penny Pilot Program, footnote 8.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act.[27] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ISE–2012–49 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2012–49. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2012–49 and should be submitted on or before July 11, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–15054 Filed 6–19–12; 8:45 am]

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[27] 15 U.S.C. 78s(b)(3)(A)(ii).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67203; File No. SR–NASDAQ–2012–066]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Adopt a New Market Maker Peg Order Available to Exchange Market Makers

June 14, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on June 6, 2012, the NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new Market Maker Peg Order to provide similar functionality as the automated functionality provided to market makers under Rules 4613(a)(2)(F) and (G).

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

4751. Definitions

The following definitions apply to the Rule 4600 and 4750 Series for the trading of securities listed on Nasdaq or a national securities exchange other than Nasdaq.

(a)–(e) No change.

(f) The term ''Order Type'' shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:

(1)–(14) No change.

(15) *''Market Maker Peg Order'' is a limit order that, upon entry, the bid or offer is automatically priced by the System at the Designated Percentage away from the then current National Best Bid and National Best Offer, or if no National Best Bid or National Best Offer, at the Designated Percentage away from the last reported sale from the responsible single plan processor in order to comply with the quotation requirements for Market Makers set forth in Rule 4613(a)(2). Upon reaching the Defined Limit, the price of a Market Maker Peg Order bid or offer will be adjusted by the System to the Designated Percentage away from the then current National Best Bid and National Best Offer, or, if no National Best Bid or National Best Offer, to the Designated Percentage away from the last reported sale from the responsible single plan processor. If a Market Maker Peg Order bid or offer moves a specified number of percentage points away from the Designated Percentage towards the then current National Best Bid or National Best Offer, as described in Rule 4613(a)(2)(F) (Quotation Creation and Adjustment), the price of such bid or offer will be adjusted to the Designated Percentage away from the then current National Best Bid and National Best Offer, or if no National Best Bid or National Best Offer, to the Designated Percentage away from the last reported sale from the responsible single plan processor. In the absence of a National Best Bid or National Best Offer and if no last reported sale, the order will be cancelled or rejected. Market Maker Peg Orders are not eligible for routing pursuant to Rule 4758 and are always*

displayed on NASDAQ. Notwithstanding the availability of Market Maker Peg Order functionality, a Market Maker remains responsible for entering, monitoring, and re-submitting, as applicable, quotations that meet the requirements of Rule 4613. A new timestamp is created for the order each time that it is automatically adjusted. For purposes of this paragraph, NASDAQ will apply the Designated Percentage and Defined Limit as set forth in Rule 4613, subject to the following exception. Nothing in this rule shall preclude a Market Maker from designating a more aggressive offset from the National Best Bid or National Best Offer than the given Designated Percentage for any individual Market Maker Peg Order. If a Market Maker designates a more aggressive offset from the National Best Bid or National Best Offer, the price of a Market Maker Peg Order bid or offer will be adjusted by the System to maintain the Market Maker-designated offset from the National Best Bid or National Best Offer, or if no National Best Bid or National Best Offer, the order will be cancelled or rejected.

(g)–(i) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to adopt a new Market Maker Peg Order to provide similar functionality presently available to Exchange market makers under Rules 4613(a)(2)(F) and (G). NASDAQ will continue to offer the present automated quote management functionality provided to market makers under Rules 4613(a)(2)(F) and (G) for a period of 3 months after the implementation of the proposed Market Maker Peg Order. The purpose of this transition period, during which both the present automated quote management functionality under Rules 4163(a)(2)(F) and (G) and the Market Maker Peg Order will operate concurrently, is to afford market makers with the opportunity to adequately test the new Market Maker Peg Order and migrate away from the present automated quote management functionality under Rules 4613(a)(2)(F) and (G). Prior to the end of this 3 month period, NASDAQ will submit a rule filing to retire the automated quote management functionality under Rules 4613(a)(2)(F) and (G).

NASDAQ adopted Rules 4613(a)(2)(F) and (G) as part of an effort to address issues uncovered by the aberrant trading that occurred on May 6, 2010.[3] The automated quote management functionality (''AQ'') offered by these rules is designed to help Exchange market makers meet the enhanced market maker obligations adopted post May 6, 2010,[4] and avoid execution of market maker ''stub quotes'' in instances of aberrant trading.[5] As part of these enhanced obligations, NASDAQ requires market makers for each stock in which they are registered to continuously maintain a two-sided quotation within a designated percentage of the National Best Bid and National Best Offer,[6] as appropriate. Although AQ has been successful in allowing Exchange market makers to meet their enhanced obligations and in avoiding the deleterious effect on the markets caused by ''stub quote'' executions, AQ presents difficulties to market makers in meeting their obligations under Rule 15c3–5 under the Act (the ''Market Access Rule'')[7] and Regulation SHO.[8]

The Market Access Rule requires a broker-dealer with market access, or that provides a customer or any other person with access to an exchange or alternative trading system through use of its market participant identifier or otherwise, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity. These controls must be reasonably designed to ensure compliance with all regulatory requirements, which are defined as ''all federal securities laws, rules and regulations, and rules of self-regulatory organizations, that are applicable in connection with market access.''[9]

In addition to the obligations of the Market Access Rule, broker-dealers have independent obligations that arise under Regulation SHO. Regulation SHO obligations generally include properly marking sell orders, obtaining a ''locate'' for short sale orders, closing out fail to deliver positions, and, where applicable, complying with the short sale price test.[10] While there are certain exceptions to some of the requirements of Regulation SHO where a market maker is engaged in bona-fide market making activities,[11] the availability of

[3] Securities Exchange Act Release No. 63255 (November 5, 2010), 75 FR 69484 (November 12, 2010) (SR–NASDAQ–2010–115, *et al.*).

[4] *Id.*

[5] For each issue in which a market maker is registered, AQ automatically creates a quotation for display to comply with market making obligations. Compliant displayed quotations are thereafter allowed to rest and are not further adjusted unless the relationship between the quotation and its related national best bid or national best offer, as appropriate, shrinks to the greater of: (a) 4 percentage points, or, (b) one-quarter the applicable percentage necessary to trigger an individual stock trading pause as described in Rule 4120(a)(11), or expands to within that same percentage less 0.5%, whereupon AQ will immediately re-adjust and display the market maker's quote to the appropriate designated percentage. Quotations originally entered by market makers are allowed to move freely towards the national best bid or national best offer, as appropriate, for potential execution. In the event of an execution against a System (as defined in Rule 4751(a)) created compliant quotation, the market maker's quote is refreshed by AQ on the executed side of the market at the applicable designated percentage away from the then national best bid (offer), or if no national best bid (offer), the last reported sale. Rule 4613(F) & (G).

[6] As defined by Regulation NMS Rule 600(b)(42). 17 CFR 242.600.

[7] 17 CFR 240.15c3–5.

[8] 17 CFR 242.200 through 204.

[9] 17 CFR 240.15c3–5.

[10] *Supra* note 9.

[11] *See* 17 CFR 242.203(b)(1). The Commission adopted a narrow exception to Regulation SHO's ''locate'' requirement for market makers that may need to facilitate customer orders in a fast moving market without possible delays associated with complying with such requirement. Only market makers engaged in bona fide market making in the security at the time they effect the short sale are excepted from the ''locate'' requirement. *See* Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008, 48015 (August 6, 2004) (providing guidance as to what does not constitutes bona-fide market making for purposes of claiming the exception to Regulation SHO's ''locate'' requirement). *See also* Exchange Act Release No. 58775 (October 14, 2008), 73 FR 61690, 61698–9 (October 17, 2008) (providing guidance regarding what is bona-fide market making for purposes of complying with the market maker exception to Regulation SHO's ''locate'' requirement including without limitation whether the market maker incurs any economic or market risk with respect to the securities, continuous quotations that are at or near the market on both sides and that are communicated and represented in a way that makes them widely accessible to investors and other broker-dealers and a pattern of trading that includes both purchases and sales in roughly comparable amounts to provide liquidity to customers or other broker-dealers). Thus, market makers would not be able to rely solely on quotations priced in accordance with the Designated Percentages under proposed Rule 4751(f)(15) or the AQ functionality under Rules 4163(a)(2)(F) and (G) for eligibility for the bona-fide market making exception to the

Continued

those exceptions is distinct and independent from whether a market maker submits an order that is a Market Maker Peg Order.

The current AQ functionality offered to market makers reprices and ''refreshes'' a market maker's quote when it is executed against, without any action required by the market maker. When a market maker's quote is refreshed by the Exchange, however, the market maker has an obligation to ensure that the requirements of the Market Access Rule and Regulation SHO are met. To meet these obligations, a market maker must actively monitor the status of its quotes and ensure that the requirements of the Market Access Rule and Regulation SHO are being satisfied.

Market Maker Peg Order

In an effort to simplify market maker compliance with the requirements of the Market Access Rule and Regulation SHO, NASDAQ is proposing to adopt a new order type available only to Exchange market makers, which offers AQ-like functionality but also allows a market maker to comply with the requirements of the Market Access Rule and Regulation SHO. Specifically, NASDAQ is proposing to replace AQ functionality with the Market Maker Peg Order. The Market Maker Peg Order would be a one-sided limit order and similar to other peg orders available to market participants in that the order is tied or ''pegged'' to a certain price,[12] but it would not be eligible for routing pursuant Rule 4758 and would always be displayed and attributable (as defined in Rule 4751). The Market Maker Peg Order would be limited to market makers and would have its price automatically set and adjusted, both upon entry and any time thereafter, in order to comply with the Exchange's rules regarding market maker quotation requirements and obligations.[13] It is expected that market makers will perform the necessary checks to comply with Regulation SHO, as discussed above, prior to entry of a Market Maker Peg Order. Upon entry and at any time the order exceeds either the Defined Limit, as described in Rule 4613(a)(2)(E), or moves a specified number of percentage points away from the Designated Percentage towards the then current National Best Bid or National Best Offer, as described in Rule 4613(a)(2)(F), the Market Maker Peg Order would be priced by the Exchange at the Designated Percentage[14] away from the then current National Best Bid and National Best Offer, or, if no National Best Bid or National Best Offer, to the Designated Percentage away from the last reported sale from the responsible single plan processor. In the absence of a National Best Bid or National Best Offer and last reported sale, the order will be cancelled or rejected. Adjustment to the Designated Percentage is designed to avoid an execution against a Market Maker Peg Order that would initiate a single stock circuit breaker. In the event of an execution against a Market Maker Peg Order that reduces the size of the Market Maker Peg Order below one round lot, the market maker would need to enter a new order, after performing the regulatory checks discussed above, to satisfy their obligations under Rule 4613.[15] In the event that pricing the Market Maker Peg Order at the Designated Percentage away from the then current National Best Bid and National Best Offer, or, if no National Best Bid or National Best Offer, to the Designated Percentage away from the last reported sale from the responsible single plan processor would result in the order exceeding its limit price, the order will be cancelled or rejected.

NASDAQ is also proposing to allow a market maker to designate an offset more aggressive (i.e., smaller) than the Designated Percentage for any given Market Maker Peg Order. This functionality will allow a market maker to quote at price levels that are closer to the National Best Bid and National Best Offer if it elects to do so. To use this functionality, a market maker must designate the desired offset upon order entry.[16] Thereafter and unlike the default[17] Market Maker Peg Order, a Market Maker Peg Order with a market maker-designated offset will have its price automatically adjusted on a tick-by-tick basis by the System to maintain the market maker-designated offset from the National Best Bid or National Best Offer until the order is executed or cancelled.[18] In the absence of a National Best Bid or National Best Offer, Market Maker Peg Orders with a market maker-designated offset will be cancelled or rejected. In the event that pricing the Market Maker Peg Order at the market maker-designated offset away from the then current National Best Bid and National Best Offer would result in the order exceeding its limit price, the order will be cancelled or rejected.

The Market Maker Peg Order will be accepted and executable during System hours. During pre- and post-market hours, the wider Designated Percentage and Defined Limit associated with the 9:30 a.m.–9:45 a.m. and 3:35 p.m.–4:00 p.m. periods under Rule 4613(a)(2)(D) and (E) will be applied.

NASDAQ believes that this order-based approach is superior in terms of the ease in complying with the requirements of the Market Access Rule and Regulation SHO while also providing similar quote adjusting functionality to its market makers. Market makers would have control of order origination, as required by the Market Access Rule, while also allowing market makers to make marking and locate determinations prior to order entry, as required by Regulation SHO. As such, market makers are fully able to comply with the requirements of the Market Access Rule and Regulation SHO, as they would when placing any order, while also meeting their Exchange market making obligations. In this regard, the Market Maker Peg Order, like the current AQ system, does not ensure that the market maker is satisfying the requirements of Regulation SHO, including the satisfaction of the locate requirement of Rule 203(b)(1) or an exception thereto.

''locate'' requirement based on the criteria set forth by the Commission. It should also be noted that a determination of bona-fide market making is relevant for the purposes of a broker-dealers close-out obligations under Rule 204 of Regulation SHO. *See* 17 CFR 242.204(a)(3).

[12] Rule 4751(f)(4) defines Pegged Orders.

[13] The Market Maker Peg Order is one-sided so a market maker seeking to use Market Maker Peg Orders to comply with the Exchange's rules regarding market maker quotation requirements would need to submit both a bid and an offer using the order type.

[14] The Designated Percentage is the individual stock pause trigger percentage under Rule 4120(a)(11) (or comparable rule of another exchange) less two (2) percentage points. *See* Rule 4613(a)(2)(D).

[15] Rule 4613 generally sets forth NASDAQ market maker requirements, which include quotation and pricing obligations, and the firm quote obligation.

[16] If a market maker wishes, it can designate a more aggressive bid while using the Defined Percentage and Defined Limit for its offer, or vice versa.

[17] In the absence of an offset designation, a Market Maker Peg Order will default to using the Defined Percentage and Defined Limit, and the repricing process whereby, upon reaching the Defined Limit, the price of a Market Maker Peg Order bid or offer will be adjusted by the System to the Designated Percentage away from the then current National Best Bid or National Best Offer, or, if no National Best Bid or National Best Offer, to the Designated Percentage away from the last reported sale from the responsible single plan processor.

[18] Market Maker Peg Orders with a market maker-designated offset may be able to qualify as bona-fide market making for purposes of Regulation SHO, depending on the facts and circumstances. A market maker entering such an order must consider the factors set forth by the Commission in determining whether reliance on the exception from the ''locate'' requirement of Rule 203 for bona-fide market making is appropriate with respect to the particular Market Maker Peg Order and its designated offset. *See supra* note 12.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[19] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[20] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning minimum market maker quotation requirements and member obligations to comply with the regulatory requirements of the Market Access Rule and Regulation SHO. The Exchange also believes that providing Exchange market makers with a transition period, during which they may adequately test the new functionality, will serve to minimize the potential market impact caused by the implementation of the order type.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission shall:

A. By order approve or disapprove such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78k–1(a)(1).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–066 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–066. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–066 and should be submitted on or before July 11, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–15055 Filed 6–19–12; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Wind-Up Order of the United States District Court for the Northern District of Iowa, Cedar Rapids Division, entered September 19, 2011, the United States Small Business Administration hereby revokes the license of Berthel SBIC, LLC, a Delaware limited liability company, to function as a small business investment company under the Small Business Investment Company License No. 07070100 issued to Berthel SBIC, LLC, on May 4, 1998 and said license is hereby declared null and void as of September 19, 2011.

United States Small Business Administration.

Dated: June 4, 2012.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. 2012–14837 Filed 6–19–12; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2012–0036]

Notice of Meeting of the Occupational Information Development Advisory Panel

AGENCY: Social Security Administration (SSA).

ACTION: Notice of upcoming panel teleconference meeting and Request for Comment.

SUMMARY: The Occupational Information Development Advisory Panel (Panel) is a discretionary Panel, established under the Federal Advisory Committee Act of 1972, as amended. The Panel provides independent advice and recommendations to us on the creation of an occupational information system for use in our disability programs and for our adjudicative needs.

[21] 17 CFR 200.30–3(a)(12).

Meeting Information

DATES: Thursday, July 5, 2012. Call in number: 877–852–6575, Leader/Host: Leola S. Brooks.

To be sure that your comments are considered, we must receive them no later than June 29, 2012.

SUPPLEMENTARY INFORMATION:

Type of meeting: The teleconference meeting is open to the public.

Agenda: The Panel will meet on Thursday, July 5, 2012, from 2 p.m. until 4 p.m. (EDT).

The tentative agenda for this meeting includes: Individual and organizational public comment; Panel discussion and deliberation, and an administrative business meeting.

The Designated Federal Officer will post the meeting agenda on the Internet at *http://www.ssa.gov/oidap/meeting_information.html* at least one week prior to the start date. You can also receive a copy electronically by email or by fax, upon request. We retain copies of all proceedings available for public inspection, by appointment at the Panel's office.

In addition to notice of this teleconference meeting, the Panel is requesting comment on its Recommendation #9 to us, as determined during deliberation at our June 4, 2012 teleconference meeting. Individuals or organizations may provide testimony during public comment period scheduled for the July 5, 2012 teleconference meeting or in writing.

The Panel will hear public comment during the teleconference meeting from 2:15 p.m. to 3:15 p.m. (EDT). Individuals and organizational representatives must contact the Designated Federal Officer (by email to *OIDAP@ssa.gov*), to reserve a time slot assigned on a first come, first served basis, for a maximum of ten minutes. You must also submit your testimony in writing; no longer than five (5) pages; in Microsoft Word or other word processing formats (no PDF files accepted); by mail, fax or email to *OIDAP@ssa.gov.*

In the event that scheduled public comment does not take the entire time allotted, the Panel may use any remaining time to deliberate or conduct other business.

To be sure that we consider your comments, we must receive them no later than Friday, June 29, 2012.

ADDRESSES: You may submit written comments by any one of three methods—Internet, fax or mail. Do not submit the same comments multiple times, or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2012–0036, so that we may associate your comments with the correct activity.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend this method for submitting your comments. Visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the Search function of the Web page to find docket number SSA–2012–0036, and then submit your comment. Once you submit your comment, the system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately as we must manually post each comment. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 597–0825.

3. *Mail:* Address your comments to the Office of Program Development and Research, Office of Vocational Resources Development, Social Security Administration, 3–E–26 Robert M. Ball Building, 6401 Security Boulevard, Baltimore, MD 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by appointment with the contact person identified below.

The Panel is soliciting comments on Recommendation #9, as determined during deliberation at its June 4, 2012 teleconference meeting, which reads:

Continued Transparency and Public Engagement

The OIDAP brought transparency to SSA's occupational information development process that will impact the lives of millions of Americans. We believe SSA must continue this transparency as it develops any occupational information that will affect decision-making in the disability programs. We offer the following advice:

(1) Publicize reports from leadership of the Office of Vocational Resources Development (OVRD) on the project's activities, including continued updates regarding the progress with this initiative and strategic goals on agency Web sites and in public forum webinars and informational sessions, advertised in the **Federal Register** and agency sources;

(2) Announce all future strategic research and development plans, as well as findings from the project development and data collection efforts, to researchers for peer review;

(3) Continue to promote a venue for public comment and a repository for such comment; and,

(4) Engage and involve stakeholders and the scientific community in the review of research and development activities, as well as issues related to the analysis, usability, and integration of occupational data into the disability adjudication process.

The Science

The foundation upon which any occupational information database rests is its taxonomy of attributes to be measured and the scales that actually measure them. As with anything anyone builds, if the foundation is inadequate, the structure will fail. We reiterate the importance of developing a taxonomic content model that is strong enough to withstand legal challenge. We affirm our belief that:

(1) The taxonomy must comprehensively measure the world of work and those attributes applicable to disability adjudication;

(2) Internal staff trained and experienced in the scientific design and research, and also in disability adjudication application, must work together in this process;

(3) The scales used to measure these attributes must be absolute, cross job-relative, and psychometrically-sound;

(4) The occupational data must link to other national occupational employment databases through the structure of the Standard Occupational Classification;

(5) SSA adopts a carefully-designed sampling strategy that represents all jobs in the national economy (the Occupational Medical-Vocational study conducted by OVRD offers a good starting place);

(6) The sampling frame must adequately represent all geographically-diverse sectors of the economy, including emerging sectors, be periodically updated, and correspond to the data collection strategy;

(7) Data collection modes, subject matter experts, and the training and experience of those involved in data collection is a vital step in the development of data; thus, SSA should pay special attention to this phase of the project, and particularly to the qualifications and training of field job analysts, an area that presents the greatest threat to the validity of the data;

(8) SSA should test the resulting data with users for comparability and decision-making effects; and,

(9) SSA should periodically update the data to remain relevant and reflective of the world of work in the United States.

Failure to fully ensure the scientific veracity of the occupational taxonomy, data collection instrument, sampling strategy, and sources of data or data collection methods, will make SSA vulnerable to legitimate litigation.

The comment period is open through June 29, 2012.

Contact Information: Anyone requiring further information should contact the Panel staff at: Occupational Information Development Advisory Panel, Social Security Administration, 6401 Security Boulevard, 3–E–26 Robert M. Ball Building, Baltimore, MD 21235–0001. Fax: 410–597–0825. Email to *OIDAP@ssa.gov.* For additional information, please visit the Panel Web site at *www.ssa.gov/oidap.*

Leola S. Brooks,

Designated Federal Officer, Occupational Information Development Advisory Panel.

[FR Doc. 2012–15015 Filed 6–19–12; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 7926]

Determination Under Section 620(q) of the Foreign Assistance Act of 1961, as Amended, Relating to Assistance to Antigua and Barbuda

Pursuant to the authority vested in me by section 620(q) of the Foreign Assistance Act of 1961, as amended (FAA), Executive Order 12163, as amended by Executive Order 13346, and Delegation of Authority 245–1, I hereby determine that continued assistance to Antigua and Barbuda is in the national interest of the United States and thereby waive the application of section 620(q) of the FAA for such assistance.

This Determination shall be reported to Congress and published in the **Federal Register**.

Dated: June 11, 2012.

Thomas R. Nides,

Deputy Secretary of State for Management and Resources.

[FR Doc. 2012–15108 Filed 6–19–12; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2012–0053]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on March 28, 2012. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by July 20, 2012.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2012–0053.

FOR FURTHER INFORMATION CONTACT: Mark Ferroni, 202–366–9237, Office of Natural Environment, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: *Title:* FHWA Traffic Noise Model Version 3.0 Beta-Tester Information.

Background: Prior to the release of the Federal Highway Administration Traffic Noise Model (FHWA TNM), the FHWA Highway Traffic Noise Prediction Model (FHWA–RD–77–108), or ''108 model,'' was in use for over 20 years. Although an effective model for its time, the ''108 model'' was comprised of acoustic algorithms, computer architecture, and source code that dated to the 1970s. Since that time, significant advancements have been made in the methodology and technology for noise prediction, barrier analysis and design, and computer software design and coding. Given the fact that over $500 million were spent on barrier design and construction between 1970 and 1990, the FHWA identified the need to design, develop, test, and document a state-of-the-art highway traffic noise prediction model that utilized these advancements. This need for a new traffic noise prediction model resulted in the FHWA TNM.

In March 1998, the FHWA released the FHWA TNM Version 1.0. It was developed as a means for aiding compliance with policies and procedures under FHWA regulations. Since its release in March 1998, Version 1.0a was released in March 1999, Version 1.0b in August 1999, Version 1.1 in September 2000, Version 2.0 in June 2002, Version 2.1 in March 2003 and the current version, Version 2.5 was released in April 2004.

The FHWA is currently developing the TNM version 3.0, with anticipated beta-testing of this version towards the end of 2012. Version 3.0 is an entirely new, state-of-the-art computer program used for predicting noise impacts in the vicinity of highways. It uses advances in personal computer hardware and software to improve upon the accuracy and ease of modeling highway noise, including the design of effective, cost-efficient highway noise barriers. This information request is to gather information from the beta-testers on their computer configurations, their experiences using the FHWA TNM and the availability of TNM files.

Respondents: Approximately 25 entities.

Frequency: Once.

Estimated Average Burden per Response: Approximately 15 minutes.

Estimated Total Annual Burden Hours: Approximately 6.25 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request

for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: June 7, 2012.

Steve Smith,

Chief, Information Technology Division.

[FR Doc. 2012–15084 Filed 6–19–12; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Withdrawal of the Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the Improvements to Interstate 515 (I–515), Clark County, NV

AGENCY: U.S. Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Withdrawal of the Notice of Intent to prepare an EIS for the improvements to I–515 in Clark County, Nevada.

SUMMARY: The FHWA is issuing this notice to advise the public that, effective immediately, the Notice of Intent (NOI) (**Federal Register** Vol. 69, No. 156; FR Doc 04–18584) to prepare an EIS for the proposed improvements to I–515 in the cities of Las Vegas and Henderson, Clark County, NV and in that portion of unincorporated Clark County located between the two cities, is being withdrawn. The NOI for the EIS was announced on August 13, 2004.

FOR FURTHER INFORMATION CONTACT: For Federal Highway Administration: Abdelmoez Abdalla, Environmental Program Manager, Federal Highway Administration, 705 N. Plaza, Suite 220, Carson City, NV 89701, Telephone: 775–687–1231, email: *Abdelmoez.Abdalla@fhwa.dot.gov.* For the Nevada Department of Transportation (NDOT): Mr. Steve M. Cooke, P.E., Chief, Environmental Services Division, Nevada Department of Transportation, 1263 South Stewart Street, Carson City, Nevada 89712; telephone: (775) 888–7013; email: *scooke@dot.state.nv.us.*

SUPPLEMENTARY INFORMATION: The project was to involve improvements to the I–515 Corridor between the southern terminus of the present I–515 Freeway in the City of Henderson (MP56) and the northern terminus of I–515 in the City of Las Vegas (MP76). The purpose of the project was to make improvements to the corridor necessary to provide for existing and projected traffic demand resulting from the growth of interstate traffic and local commuter traffic in the southeast Las Vegas Valley. Because of the economic downturn, FHWA and NDOT are reassessing the needs and timing for improvements to the I–515 Corridor and have indefinitely postponed any major improvements to the corridor.

Issued on June 14, 2012.

Susan Klekar,

Division Administrator, Carson City, Nevada.

[FR Doc. 2012–14994 Filed 6–19–12; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 2012–0006–N–7]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than August 20, 2012.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Ms. Janet Wylie, Office of Planning and Administration, RPD–3, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 20, Washington, DC 20590, or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–0580.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6170, or via email to Ms. Wylie at *janet.wylie@dot.gov,* or to Ms. Toone at *kim.toone@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Ms. Janet Wylie, Office of Planning and Administration, RPD–3, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 20, Washington, DC 20590 (telephone: (202) 493–6353) or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). See 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce

information requested. See 44 U.S.C. 3501.

Below is a brief summary of the information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Notice of Funds Availability and Solicitation of Applications for Grants Under the Railroad Rehabilitation and Repair Grant Program.

OMB Control Number: 2130–0580.

Status: Regular Review.

Type of Request: Revision of a currently approved collection.

Abstract: The Railroad Rehabilitation and Repair Grant Program (Catalog of Federal Domestic Assistance (CFDA) Program Number 20.314), which was originally supported with up to $20,000,000 of Federal funds provided to FRA as part of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110–329, September 30, 2008). On May 27, 2009, FRA selected 12 projects, totaling $15 million under this program. On August 5, 2010, FRA selected 10 more projects for the remaining funds. A few revisions to grant agreements and close-out of grants are the only remaining activities for this program.

Funds provided under this Program may constitute no more than 80 percent of the total cost of a selected project, with the remaining cost funded from other non-Federal sources. Projects include repairs and rehabilitation to Class II and Class III railroad infrastructure damaged by hurricanes, floods, and natural disasters that are located in counties that were identified in a Disaster Declaration for Public Assistance issued by the President (*http://www.fema.gov/news/disasters.fema#sev1*).

Class II and Class III railroad infrastructure repaired and rehabilitated include railroad rights-of-way, bridges, signals and other infrastructure which are part of the general railroad system of transportation and primarily used by railroads to move freight traffic. FRA anticipates that no further public notification will be made with respect to this Program.

Affected Public: State and local governments, government sponsored authorities and corporations, railroads.

REPORTING BURDEN

Grant program	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
Revision to Grant Applications	22 States/Local govt	2 grant revisions	40 hours	80
Progress/Financial Reports	22 States/Local govt	88 grantees	2 hours	176
Close-out Procedures	44 States/Local govt	44 sets of close-out documents.	36 hours	792

Total Responses: 134.

Estimated Total Annual Burden: 1,048 hours.

Frequency of Submission: Quarterly; recordkeeping.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on June 14, 2012.

Michael Logue,

Associate Administrator for Administration, Federal Railroad Administration.

[FR Doc. 2012–15085 Filed 6–19–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA—2012–0081]

Amendments to Highway Safety Program Guidelines

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments, highway safety program guidelines.

SUMMARY: Section 402 of title 23 of the United States Code requires the Secretary of Transportation to promulgate uniform guidelines for State highway safety programs. The National Highway Traffic Safety Administration (NHTSA) is seeking comments on proposed amendments to five (5) guidelines and one (1) new guideline that reflect program methodologies and approaches that have proven to be successful and are based on sound science and program administration. The guidelines the agency proposes to revise are: Guideline No. 1 Periodic Motor Vehicle Inspection, Guideline No. 2 Motor Vehicle Registration, Guideline No. 6 Codes and Laws, Guideline No. 16 Management of Highway Incidents (formerly Debris Hazard Control and Cleanup), and Guideline No. 18 Motor Vehicle Crash Investigation and Incident Reporting (formerly Accident Investigation and Reporting). The new guideline is No. 13 Older Driver Safety. NHTSA believes the proposed amendments and new guideline will provide more accurate, current and effective guidance to the States. The guidelines will be made publicly available on the NHTSA Web site.

DATES: Comments must be received on or before July 20, 2012.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act

Statement in the **Federal Register** at 65 FR 19477 FR 19477, April 11, 2000, or you may visit *http://www.regulations.gov*.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Kirinich (202) 366–1836, Office of Governmental Affairs, Policy and Strategic Planning, NHTSA, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. Email: *susan.kirinich@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 402 of title 23 of the United States Code requires the Secretary of Transportation to promulgate uniform guidelines for State highway safety programs. As the highway safety environment changes, it is necessary for NHTSA to update the guidelines to provide current information on effective program content for States to use in developing and assessing their traffic safety programs. These guidelines reflect the best available science and the real-world experience of NHTSA and the States in developing and managing traffic safety program content. NHTSA will update the guidelines periodically to address new issues and to emphasize program methodologies and approaches that have proven to be effective in these program areas.

The guidelines offer direction to States in formulating their highway safety plans for highway safety efforts that are supported with section 402 grant funds, as well as safety activities funded from other sources. The guidelines provide a framework for developing a balanced highway safety program and serve as benchmarks by which States can assess the effectiveness of their own programs. NHTSA encourages States to use these guidelines and build upon them to optimize the effectiveness of highway safety programs conducted at the State and local levels.

The guidelines emphasize areas of nationwide concern and highlight effective countermeasures. As each guideline is updated or created, it will include the date of its revision or development.

NHTSA has developed a new guideline on older drivers, No. 13, to address this growing segment of the population. This new guideline will help States develop plans to address the particular needs of older drivers and address the emerging challenges from the increasing population of older drivers in their States. Because of the unique issues related to older driver safety, this guideline also includes recommendations related to Medical Providers and Social Services Providers.

It is important that States begin to address the safety of older road users now because the population of people 65 and older will increase dramatically in the coming years. These population changes will result in a disproportionate increase in deaths and injuries among older people if no actions are taken. This guideline is also designed to help policymakers with decisions about how best to address the real and growing problem of older driver safety.

All the highway safety guidelines are on the NHTSA Web site, in the Highway Safety Grant Management Manual, and on the Traffic Safety page at *http://www.nhtsa.dot.gov/nhtsa/whatsup/tea21/tea21programs/*.

The five (5) guidelines NHTSA plans to revise along with one (1) new guideline represent the last in a series of three sets of revisions to the guidelines. For the first set of revisions, the agency revised six (6) guidelines on November 7, 2006 (71 FR 65172): Guideline No. 3 Motorcycle Safety, Guideline No. 8 Impaired Driving, Guideline No. 14 Pedestrian and Bicycle Safety, Guideline No. 15 Traffic Enforcement, Guideline No. 19 Speed Management, and Guideline No. 20 Occupant Protection. The following five (5) guidelines were revised on April 1, 2009: Guideline No. 4 Driver Education, Guideline No. 5 Non-Commercial Driver Licenses, Guideline No. 7, Judicial and Court Services, Guideline No. 10 Traffic Records, and Guideline No. 17 Pupil Transportation. A new guideline was also added at that time: Guideline No. 12, Prosecutor Training.

II. Public Participation

How do I prepare and submit written comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your primary comments cannot exceed 15 pages. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your primary comments. There is no limit on the length of the attachments. Please submit your comments to the Docket by any of the methods outlined under **ADDRESSES**.

How can I be sure that my comments were received?

If you submit your comments by mail and wish the Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, the Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512).

Will the agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final guideline (assuming that one is issued), we will consider that comment as an informal suggestion for future guideline action.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the Docket Management Facility by going to the street address given above under **ADDRESSES**. The Docket Management Facility is open between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays. You may also read the materials placed in the docket for this document (e.g., the comments submitted in response to this document by other interested persons)

at any time by going to *http://www.regulations.gov*. Follow the online instructions for accessing the dockets.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

In consideration of the foregoing, NHTSA proposes to amend Guidelines 1, 2, 6, 16, and 18, and proposes new Guideline 13, to read as follows.

Highway Safety Program Guideline No. 1

Periodic Motor Vehicle Inspection

Each State should have a program for periodic inspection of all registered vehicles to reduce the number of vehicles with existing or potential conditions that may contribute to crashes or increase the severity of crashes that do occur, and should require the owner to correct such conditions.

I. An inspection program would provide, at a minimum, that:

A. Every vehicle registered in the State is inspected at the time of initial registration and on a periodic basis thereafter as determined by the State based on evidence of the effectiveness of inspection programs.

B. The inspection is performed by competent personnel specifically trained to perform their duties and certified by the State.

C. The inspection covers systems, subsystems, and components having substantial relation to safe vehicle performance.

D. Each inspection station maintains records in a form specified by the State, which includes at least the following information:

- Class of vehicle.
- Date of inspection.
- Make of vehicle.
- Model year.
- Vehicle identification number.
- Defects by category.
- Identification of inspector.
- Mileage or odometer reading.

E. The State publishes summaries of records of all inspection stations at least annually, including tabulations by make and model of vehicle.

II. The program should be periodically evaluated by the State and the National Highway Traffic Safety Administration should be provided with an evaluation summary.

Highway Safety Program Guideline No. 2

Motor Vehicle Registration

Each State should have a motor vehicle registration program.

I. A model registration program would require that every vehicle operated on public highways is registered and that the following information is readily available for each vehicle:

- Make.
- Model year.
- Vehicle Identification Number.
- Type of body.
- License plate number.
- Name of current owner.
- Current address of owner.
- Registered gross laden weight of every commercial vehicle.

II. Each program should have a records system that provides at least the following services:

- Rapid entry of new data into the records or data system.
- Controls to eliminate unnecessary or unreasonable delay in obtaining data.
- Rapid audio or visual response upon receipt at the records station of any priority request for status of vehicle possession authorization.
- Data available for statistical compilation as needed by authorized sources.
- Identification and ownership of vehicle sought for enforcement or other operation needs.

III. This program should be periodically evaluated by the State and the National Highway Traffic Safety Administration should be provided with an evaluation summary.

Highway Safety Program Guideline No. 6

Codes and Laws

Each State should strive to achieve uniformity of traffic codes and laws throughout the State. The State Highway Safety Office should maintain a list of all relevant traffic codes and laws, and serve as a resource to State and local jurisdictions on any proposed changes.

Each State should utilize all available sources, such as Federal or State legislative databases or Web sites, to ensure that its traffic codes and laws reflect the most current evidence-based and peer-reviewed research.

Highway Safety Program Guideline No. 13

Older Driver Safety

Each State, in cooperation with its political subdivisions, tribal governments and other stakeholders, should develop and implement a comprehensive highway safety program, reflective of State demographics, to achieve a significant reduction in traffic crashes, fatalities, and injuries on public roads. The highway safety program should include a comprehensive older driver safety program that aims to reduce older driver crashes, fatalities, and injuries. To maximize benefits, each State older driver safety program should address driver licensing and medical review of at-risk drivers, medical and law enforcement education, roadway design, and collaboration with social services and transportation services providers. This guideline recommends the key components of a State older driver safety program, and criteria that the program components should meet.

In this guideline, there are recommendations regarding specific partner groups. However, it is likely that there are other State, local, and non-government organizations that could help in achieving goals related to older driver safety because their missions are related to the safe mobility of older people. When older people can no longer drive safely, their mobility needs are often met by alternative means such as ride programs or transit services. Federal highway safety funds can be used for highway safety purposes—which might include programs to facilitate older persons' decisions about when to stop driving by increasing awareness of other transportation options. However, NHTSA funds cannot be used to provide services—such as transit services—whose primary purpose is not to improve highway safety. For details on recommended practices, please see Countermeasures that Work (6th Edition, 2011) (*Countermeasures that Work.pdf*).

I. Program Management

Each State should have centralized data analysis and program planning, implementation, and coordination to identify the nature and extent of its older driver safety problems, to establish goals and objectives for the State's older driver safety program and to implement projects to reach the goals and objectives. State older driver programs should:

- Designate a lead organization for older driver safety;
- Develop resources;
- Collect and analyze data on older driver crashes, injuries, and fatalities;
- Identify and prioritize the State's older driver safety problems;
- Encourage and facilitate regular collaboration among agencies and organizations responsible for or impacted by older driver safety issues (e.g., the State Unit on Aging, State Injury Prevention Director, NGO's

related to aging or aging-related diseases);

- Develop programs and specific projects to address identified problems;
- Coordinate older driver safety projects with other highway safety projects;
- Increase awareness of older driver transportation options, such as ride programs or transit services;
- Integrate older driver safety into the State strategic highway safety plans and other related activities, including impaired driving, occupant protection, and especially driver licensing programs; and
- Routinely evaluate older driver safety programs and services and use the results in program planning.

II. Roadway Design for Older Driver Safety

Traffic engineering and roadway design can challenge or ease a driver's mobility in any community. It is possible and desirable to accommodate normal aging through the application of design, operational, and traffic engineering countermeasures. The needs of older road users must be considered in new construction, as well as in spot improvements, to keep older drivers safe. The Federal Highway Administration (FHWA) has developed guidelines (*FHWA Highway Design Handbook for Older Drivers and Pedestrians*) for accommodating older road users, and the guidelines need to be implemented on State and local roadways. Each State also has a process by which it seeks user input for its Strategic Highway Safety Plans. It is reasonable for State DOTs to collaborate and seek partnerships and funding through other sources, such as the Highway Safety Plans, which come from the Highway Safety Office, or from the State Units on Aging. State DOTs should:

- Consider Older Driver safety as an emphasis area in the Strategic Highway Safety Plan (SHSP) if data analysis identifies this as an area of concern;
- Develop and implement a plan for deploying the guidelines and recommendations to accommodate older drivers and pedestrians; and
- Develop and implement a communications and educational plan for assisting local entities in the deployment of the guidelines and recommendations to accommodate older drivers and pedestrians.

III. Driver Licensing

Driver licensing is a critical element in the oversight of public safety as it relates to older drivers. The driver licensing authority (DMV) can legally restrict or suspend an individual's license, and for that reason, it is the primary audience for these recommendations. There are three areas within driver licensing that are important to driving safety: policies; practices; and, communications.

Recommended driver licensing policies that each State should implement to address older driver safety are:

- In-person renewal should be required of individual drivers over a specified age that the State determines based on an analysis of their individual crash records;
- Medical review policies should align with the *Driver Fitness Medical Guidelines* (*Driver Fitness Medical Guidelines*) published by NHTSA and the American Association of Motor Vehicle Administrators (AAMVA); and
- Medical providers of all kinds who provide a referral regarding a driver in good faith to the driver licensing authority should be provided immunity from civil liability.

Recommended driver licensing practices that each State should implement to address older driver safety are:

- Establish a Medical Advisory Board (MAB), consisting of a range of medical professionals, to provide policy guidance to the driver licensing agency to implement;
- The medical review function of the DMV should include staff with medical expertise in the review of medically-referred drivers;
- The DMV should regularly conduct analyses and evaluation of the referrals that come through the medical review system to determine whether procedures are in place to appropriately detect and regulate at-risk drivers;
- Train DMV staff, including counter-staff, in the identification of medically at-risk drivers and the referral of those drivers for medical review; and
- Provide a simple and fast way for individuals to convert their driver licenses to identification cards.

To be effective in identification of medically at-risk drivers, the State should implement a communications program, through the DMV to:

- Make medical referral information and forms easy to find on the DMV Web site;
- Provide outreach to and training for medical providers (e.g., physicians, nurses, etc.) in making referrals of medically at-risk drivers and in finding resources on functional abilities and driving;
- Provide outreach to and training for law enforcement in successfully identifying medically at-risk drivers and in making referrals of medically at-risk drivers to the DMV; and
- Provide information on transportation options and community resources to drivers who are required to submit to medical review of their licenses.

IV. Medical Providers

State older driver safety programs rely on the identification of medically at-risk drivers by their medical providers, with the aim of limiting the impact of changes in functional abilities on the safe operation of a motor vehicle. Medical providers should know how to counsel the at-risk driver, and when confronted by a driver who refuses to heed advice to stop driving, to make a referral to the driver licensing authority. To facilitate this process, State older driver safety programs should:

- Establish and implement a communications plan for reaching medical providers;
- Disseminate educational materials for medical providers. Providers should include physicians, nurses, occupational therapists, and other medical professionals who treat or deal with older people and/or their families;
- Facilitate the provision of Continuing Medical Education (CME) credits for medical providers in learning about driving safety; and
- Facilitate referrals of medically at-risk drivers to the driver licensing authority for review.

V. Law Enforcement

Law Enforcement plays an important role in identifying at-risk drivers on the road. States should ensure that State and local older driver safety programs include a law enforcement component. Essential elements of the law enforcement component include:

- A communications plan for reaching law enforcement officers with information on medically at-risk drivers;
- Training and education for law enforcement officers that includes emphasis on ''writing the citation'' for older violators, identifying the medically at-risk driver, and making referrals of the medically at-risk driver to the driver licensing authority; and
- An easy way for law enforcement officers who are in the field to make referrals of medically at-risk drivers to the driver licensing authority.

VI. Social and Aging Services Providers

At the State-level, there are agencies that are responsible for coordinating aging services. These agencies should be collaborating with the State DOT-Transit offices in the planning for and provision of transportation services for

older residents. State Highway Safety Offices should:

• Collaborate with State Units on Aging and other social services providers on providing support related to older drivers who are transitioning from driving;

• Collaborate with State DOT-Transit offices to provide information at the local level on how individuals can access transportation services for older people; and

• Develop joint communications strategies and messages related to driver transitioning.

VII. Communication Program

States should develop and implement communication strategies directed at specific high-risk populations as identified by crash and population-based data. Communications should highlight and support specific policies and programs underway in the States and communities. The programs and materials should be culturally-relevant, multi-lingual as necessary, and appropriate to the target audience. To achieve this, States should:

• Establish a working group of State and local agencies and organizations that have an interest in older driver safety and mobility with the goal of developing common message themes; and

• Focus the communication efforts on the support of the overall policy and program.

VIII. Program Evaluation And Data

Both problem identification and continual evaluation require effective record-keeping by State and local governments. The State should identify the frequency and types of older driver crashes. After problem identification is complete, the State can identify appropriate countermeasures. The State can promote effective evaluation by:

• Supporting detailed analyses of police accident reports involving older drivers;

• Encouraging, supporting, and training localities in process, impact, and outcome evaluation of local programs;

• Conducting and publicizing statewide surveys of public knowledge and attitudes about older driver safety;

• Evaluating the use of program resources and the effectiveness of existing countermeasures for the general public and high-risk populations;

• Ensuring that evaluation results are used to identify problems, plan new programs, and improve existing programs; and

• Maintaining awareness of trends in older driver crashes at the national level and how this might influence activities statewide.

Highway Safety Program Guideline No. 16

Management of Highway Incidents (Formerly Debris Hazard and Control and Cleanup)

Each State in cooperation with its political subdivisions should have a program which provides for rapid, orderly, and safe removal from the roadway of wreckage, spillage, and debris resulting from motor vehicle accidents, and for otherwise reducing the likelihood of secondary and chain-reaction collisions, and conditions hazardous to the public health and safety.

I. The program should provide at a minimum that:

A. Traffic Incident Management programs are effective and understood by emergency first responders.

B. Operational procedures are established and implemented to:

1. Define responsibilities of all first responders;

2. Certify and classify all rescue and salvage responders and equipment;

3. Enable rescue and salvage equipment personnel to get to the scene of accidents rapidly and to operate effectively and safely on arrival—

a. On heavily traveled freeways and other limited access roads;

b. In other types of locations where wreckage or spillage of hazardous materials on or adjacent to highways endangers the public health and safety;

4. Extricate trapped persons from wreckage with reasonable care-to avoid injury or aggravating existing injuries;

5. Warn approaching drivers and detour them with reasonable care past hazardous wreckage or spillage;

6. Ensure safe handling of spillage or potential spillage of materials that are —

a. Radioactive

b. Flammable

c. Poisonous

d. Explosive

e. Otherwise hazardous; and

7. Expeditiously remove wreckage or spillage from roadways or otherwise ensure the resumption of safe, orderly traffic flow.

C. All rescue and salvage personnel are properly trained and retrained in the latest accident cleanup techniques.

D. An interoperable communications system is provided, adequately equipped and manned, to provide coordinated efforts in incident detection and the notification, dispatch, and response of appropriate services.

II. The program should be periodically evaluated by the State to ensure adherence to the principles and concepts of the National Incident Management System using the Federal Highway Administration's Traffic Incident Management State Self-Assessment (*http://ops.fhwa.dot.gov/eto_tim_pse/preparedness/tim/self.htm*). The National Highway Traffic Safety Administration should be provided with an evaluation summary.

Highway Safety Program Guideline No. 18

Motor Vehicle Crash Investigation And Incident Reporting (Formerly Accident Investigation and Reporting)

Each State should have a highway safety program for the investigation and reporting of all motor vehicle crashes and incidents, and the associated deaths, injuries and reportable property damage that occur within the State.

I. A uniform, comprehensive crash investigation and incident reporting program would provide for gathering information—who, what, when, where, why, and how—on all motor vehicle crashes and incidents, and the associated deaths, injuries, and property damage within the State and entering the information into the traffic records system for use in planning, evaluating, and furthering highway safety program goals.

II. For the purpose of this guideline, the definitions adhere to D16.1–2007, the Manual on Classification of Motor Vehicle Traffic Accidents (*http://downloads.nsc.org/pdf/D16.1_Classification_Manual.pdf*).

III. A model crash investigation and incident reporting program would be structured as follows:

A. Administration.

1. There should be a State agency having primary responsibility for the collection, storing, processing, administration and supervision of crash investigation and incident reporting information and for providing this information upon request to other user agencies.

2. At all levels of government, there should be adequate staffing (not necessarily limited to law enforcement officers) with the knowledge, skills and ability to conduct crash investigations and incident reporting and to process the collected information.

3. Procedures should be established to assure coordination, cooperation, and exchange of information among local, State, and Federal agencies having responsibility for the investigation of motor vehicle crashes and incidents, and processing of collected data.

4. Each State should establish procedures for entering crash

investigation and incident information into the statewide traffic records system (established pursuant to Highway Safety Program Guideline No. 10 Traffic Records) and for assuring uniformity and compatibility of this data with the requirements of the system, including at a minimum:

a. Use of uniform definitions and classifications as denoted in the Model Minimum Uniform Crash Criteria Guideline (MMUCC) (*http://www.mmucc.us*); and

b. A guideline format for input of data into a statewide traffic records system.

B. Crash investigation and incident reporting. Each State should establish procedures that require the reporting of motor vehicle crashes and incidents to the responsible State agency within a reasonable time after the occurrence.

C. Driver reports.

1. In motor vehicle crashes involving only property damage, and where the motor vehicle can be safely driven away from the scene, the drivers of the motor vehicles involved should be required to submit a written report consistent with State reporting requirements, to the responsible State agency. A motor vehicle should be considered capable of being normally and safely driven if it does not require towing and can be operated under its own power, in its customary manner, without further damage or hazard to itself, other traffic elements, or the roadway. Each driver report should include, at a minimum, the following information relating to the crash:

a. Location.

b. Date.

c. Time.

d. Identification of drivers.

e. Identification of the owner.

f. Identification of any pedestrians, passengers, and pedal-cyclists.

g. Identification of the motor vehicles.

h. Direction of travel of each motor vehicle involved.

i. Other property involved.

j. Environmental conditions existing at the time of the accident.

k. A narrative description of the events and circumstances leading up to the time of the crash and immediately after the crash.

2. In all other motor vehicle crashes or incidents, the drivers of the motor vehicles involved should be required to immediately notify and report the motor vehicle crash or incident to the nearest law enforcement agency of the jurisdiction in which the motor vehicle crash or incident occurred. This includes, but is not limited to, motor vehicle crashes or incidents involving: (1) Fatal or nonfatal personal injury or (2) damage to the extent that any motor vehicle involved cannot be driven under its own power, and therefore requires towing.

D. Motor vehicle crash investigation and incident reporting. Each State should establish a plan for motor vehicle crash investigation and incident reporting that meets the following criteria:

1. A law enforcement agency investigation should be conducted of all motor vehicle crashes and incidents identified in section III.C.2. of this guideline. Information collected should be consistent with the law enforcement mission of detecting and apprehending violators of any criminal or traffic statute, regulation or ordinance, and should include, as a minimum, the following:

a. Violation(s), if any occurred, cited by section and subsection, numbers and titles of the State code, that contributed to the motor vehicle crash or incident or for which the driver was arrested or cited.

b. Information supporting each of the elements of the offenses for which the driver was arrested or cited.

c. Information (collected in accordance with the program established under Highway Safety Program Guideline No. 15, Traffic Law Enforcement Services), relating to human, vehicular, and roadway factors causing individual motor vehicle crashes and incidents, injuries, and deaths, including failure to use seat belts.

2. Multidisciplinary motor vehicle crash investigation teams should be established, with representatives from appropriate interest areas, such as law enforcement, prosecutorial, traffic, highway and automotive engineering, medical, behavioral, and social sciences. Data gathered by each member of the investigation team should be consistent with the mission of the member's agency, and should be for the purpose of determining the causes of motor vehicle crashes, injuries, and deaths. These teams should conduct investigations of an appropriate sampling of motor vehicle crashes in which there were one or more of the following conditions:

a. Locations that have a similarity of design, traffic engineering characteristics, or environmental conditions, or that have a significantly large or disproportionate number of crashes.

b. Motor vehicles or motor vehicle parts that are involved in a significantly large or disproportionate number of motor vehicle crashes, or fatal or injury-producing crashes or incidents.

c. Drivers, pedestrians, and motor vehicle occupants of a particular age, sex, or other grouping, who are involved in a significantly large or disproportionate number of fatal or injury producing motor vehicle crashes or incidents.

d. Motor vehicle crashes in which the causation or the resulting injuries and property damage are not readily explainable in terms of conditions or circumstances that prevailed.

e. Other factors that concern State and national emphasis programs.

IV. Evaluation. The program should be evaluated at least annually by the State. The National Highway Traffic Safety Administration should be provided with a copy of the evaluation.

Authority: 23 U.S.C. Section 402.

Issued on: June 14, 2012.

Jeff Michael,

Associate Administrator for Research and Program Development.

[FR Doc. 2012–15011 Filed 6–19–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8038–CP

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8038–CP, Return for Credit Payments to Issuers of Qualified Bonds.

DATES: Written comments should be received on or before August 20, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or

through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Return for Credit Payments to Issuers of Qualified Bonds.

OMB Number: 1545–2142.

Form Number: Form 8038–CP.

Abstract: Form 8038–CP, Return for Credit Payments to Issuers of Qualified Bonds, was developed to carry out the provisions of the American Recovery and Reinvestment Act of 2009. It provides State and local governments with the option of issuing a tax credit bond instead of a tax-exempt governmental obligation bond. The bill gives state and local governments the option to receive a direct payment from the Federal government equal to a subsidy that would have been received through the Federal tax credit for bonds.

Current Actions: Form 8038–CP is used by issuers of build America bonds, recovery zone economic development bonds, and specified tax credit bonds who elect to receive a direct payment from the Federal Government equal to a percentage of the interest payments on these bonds. Changes were made to the form to comply with the current regulations. For specific tax credit bonds with mutual bond maturities, the refundable credit is determined separately for each maturity. As a result of the changes, the total estimated annual burden is projected to increase by 112,000 hours. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farms.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 12 hours 20 minutes.

Estimated Total Annual Burden Hours: 246,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 4, 2012.

Gerald G. Shields,

IRS Reports Clearance Officer.

[FR Doc. 2012–14844 Filed 6–19–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Information Collection; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before August 20, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, or copies of the information collection and instructions, or copies of any comments received, contact Elaine Christophe, at (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and the Internal Revenue Service, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to take this opportunity to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 et seq.).

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments will become a matter of public record. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Information Collections Open for Comment

Currently, the IRS is seeking comments concerning the following forms, and reporting and record-keeping requirements:

Title: Section 6662—Imposition of the Accuracy-Related Penalty.

OMB Number: 1545–1426.

Regulation Project Number: INTL–21–91 (TD 8656).

Abstract: These regulations provide guidance on the accuracy-related penalty imposed on underpayments of tax caused by substantial and gross valuation misstatements as defined in Internal Revenue Code sections 6662(e) and 6662(h). Under section 1.6662–6(d) of the regulations, an amount is excluded from the penalty if certain

requirements are met and a taxpayer maintains documentation of how a transfer price was determined for a transaction subject to Code section 482.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,500.

Estimated Time per Respondent: 8 hours, 3 minutes.

Estimated Total Annual Burden Hours: 20,125.

Title: Timely Mailing Treated as Timely Filing.

OMB Number: 1545–1535.

Form Number: Revenue Procedure 97–19.

Abstract: Procedure 97–19 provides the criteria that will be used by the IRS to determine whether a private delivery service qualifies as a designated Private Delivery Service under section 7502 of the Internal Revenue Code.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 17.

Estimated Time per Respondent: 180 hours 31 minutes.

Estimated Total Annual Burden Hours: 3,069.

Title: Employee Plans Compliance Resolution System.

OMB Number: 1545–1673.

Revenue Procedure Number: Revenue Procedure 2008–50.

Abstract: The information requested in Revenue Procedure 2008–50 is required to enable the Internal Revenue Service to make determinations regarding the issuance of various types of closing agreements and compliance statements. The issuance of closing agreements and compliance statements allows individual plans to continue to maintain their tax-qualified status. As a result, the favorable tax treatment of the benefits of the eligible employees is retained.

Current Actions: There are no changes being made to this revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents: 19,434.

Estimated Time per Respondent: 3 hours, 55 minutes.

Estimated Total Annual Burden Hours: 76,222.

Title: New Markets Credit.

OMB Number: 1545–1804.

Form Number: Form 8874.

Abstract: Investors to claim a credit for equity investments made in Qualified Community Development Entities use Form 8874.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 6,666.

Estimated Time per Respondent: 4 hours, 52 minutes.

Estimated Total Annual Burden Hours: 32,464.

Title: Supplemental Income and Loss.

OMB Number: 1545–1972.

Form Number: Schedule E (Form 1040).

Abstract: Schedule E (Form 1040) is used by individuals to report their Supplemental Income. The data is used to verify that the items reported on the form are correct and also for general statistical use.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 45,463.

Estimated Time per Respondent: 6 hours 15 minutes.

Estimated Total Annual Burden Hours: 284,144.

Title: Profit or Loss From Farming.

OMB Number: 1545–1975.

Form Number: Schedule F (Form 1040).

Abstract: Schedule F (Form 1040) is used by individuals to report their Farm Income and expenses. The data is used to verify that the items reported on the form are correct and also for general statistical use.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farming.

Estimated Number of Respondents: 1,323,640.

Estimated Time per Respondent: 8 hours 30 minutes.

Estimated Total Annual Burden Hours: 11,250,940.

Title: Industry Issue Program.

OMB Number: 1545–1837.

Revenue Procedure Number: Revenue Procedure 2003–36.

Abstract: Revenue Procedure 2003–36 describes the procedures for business taxpayers, industry associations, and others representing business taxpayers to submit issues for resolution under the IRS's Industry Issues Resolution Program.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Average Time per Respondent: 40 hours.

Estimated Total Annual Reporting Burden: 2,000 hours.

Title: Alternative Motor Vehicle Credit.

OMB Number: 1545–1998.

Form Number: 8910.

Abstract: Taxpayers will file Form 8910 to claim the credit for certain alternative motor vehicles placed in service after 2005.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Business or other for-profit organizations, Not-for-profit institutions, farms, Federal Government and State, Local or Tribal Government.

Estimated Number of Respondents: 10,000.

Estimated Time per Respondent: 8 hours, 58 minutes.

Estimated Total Annual Burden Hours: 88,700.

Title: Qualifying Advanced Coal Project Program.

OMB Number: 1545–2003.

Form Number: Notice 2006–24.

Abstract: This notice establishes the qualifying advanced coal project program under § 48A of the Internal Revenue Code. The notice provides the time and manner for a taxpayer to apply for an allocation of qualifying advanced coal project credits and, once the taxpayer has received this allocation, the time and manner for the taxpayer to file for a certification of its qualifying advanced coal project.

Current Actions: There are no changes to the total burden being made at this point in time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 45.

Estimated Time per Respondent: 110 hours.

Estimated Total Annual Burden Hours: 4,950.

Title: Certification of Intent To Adopt a Pre-approved Plan.

OMB Number: 1545–2011.

Form Number: Form 8905.

Abstract: Use Form 8905 to treat an employer's plan as a pre-approved plan and therefore eligible for the six-year remedial amendment cycle of Part IV of Revenue Procedure 2005–66, 2005–37. This form is filed with other document(s).

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farms.

Estimated Number of Respondents: 29,000.

Estimated Time per Respondent: 2 hours 50 minutes.

Estimated Total Annual Burden Hours: 82,360.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Approved: June 11, 2012.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2012–14978 Filed 6–19–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Bankruptcy Compliance Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Bankruptcy Compliance Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, July 10, 2012.

FOR FURTHER INFORMATION CONTACT: Timothy Shepard at 1–888–912–1227 or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Bankruptcy Compliance Project Committee will be held Tuesday, July 10, 2012, at 9 a.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Timothy Shepard. For more information please contact Mr. Shepard at 1–888–912–1227 or 206–220–6095, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS Issues

Dated: June 13, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–14960 Filed 6–19–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Face-to-Face Service Methods Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Face-to-Face Service Methods Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, July 10, 2012.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1–888–912–1227 or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Face-to-Face Service Methods Project Committee will be held Tuesday, July 10, 2012, at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information please contact Ms. Powers at 1–888–912–1227 or 954–423–7977, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS Issues

Dated: June 13, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–14963 Filed 6–19–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Refund Processing Communications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Refund Processing Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, July 12, 2012.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Refund Processing Communications Project Committee will be held Thursday, July 12, 2012 at 3 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with

Ms. Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: June 13, 2012.

Louis Morizio,

Acting TAP Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–14961 Filed 6–19–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Taxpayer Advocacy Panel Taxpayer Burden Reduction Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Burden Reduction Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, July 18, 2012.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10 (a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Burden Reduction Project Committee will be held Wednesday, July 18, 2012, at 2:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Jenkins. For more information please contact Ms. Jenkins at 1–888–912–1227 or 718–488–2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: June 13, 2012.

Louis Morizio,

Acting TAP Director, Taxpayer Advocacy Pane.

[FR Doc. 2012–14965 Filed 6–19–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Small Business/Self-Employed Decreasing Non-Filers Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Small Business/Self-Employed Decreasing Non-Filers Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, July 17, 2012.

FOR FURTHER INFORMATION CONTACT: Patricia Robb at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Small Business/Self-Employed Decreasing Non-Filers Project Committee will be held Tuesday, July 17, 2012, at 1 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Patricia Robb. For more information please contact Ms. Robb at 1–888–912–1227 or 414–231–2360, or write TAP Office, Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: June 13, 2012.

Louis Morizio,

Acting TAP Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–14967 Filed 6–19–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Toll-Free Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Toll-Free Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, July 3, 2012.

FOR FURTHER INFORMATION CONTACT: Marianne Dominguez at 1–888–912–1227 or 954–423–7978.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Project Committee will be held Tuesday, July 03, 2012, at 11 a.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marianne Dominguez. For more information please contact Ms. Dominguez at 1–888–912–1227 or 954–423–7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: June 13, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–14968 Filed 6–15–12; 11:15 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting

public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, July 19th and Friday, July 20th, 2012.

FOR FURTHER INFORMATION CONTACT: Susan Gilbert at 1–888–912–1227 or (515) 564–6638.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Thursday, July 19, 2012, at 8 a.m. to 4:30 p.m. and Friday, July 20th at 8 a.m. to 12 noon Eastern Standard Time. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Susan Gilbert. For more information please contact Ms. Gilbert at 1–888–912–1227 or (515) 564–6638 or write: TAP Office, 210 Walnut Street, Stop 5115, Des Moines, IA 50309 or contact us at the Web site: *http://www.improveirs.org*.

The agenda will include various IRS topics.

Dated: June 13, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–14969 Filed 6–19–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Return Processing Delays Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Return Processing Delays Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, July 3, 2012.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Return Processing Delays Project Committee will be held Tuesday, July 03, 2012, at 9:30 a.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notifications of intent to participate must be made with Ms. Janice Spinks. For more information please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org*.

The agenda will include various IRS issues.

Dated: June 13, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–14970 Filed 6–15–12; 11:15 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, July 11, 2012.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be held Wednesday, July 11, 2012, at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Knispel. For more information please contact Ms. Knispel at 1–888–912–1227 or 718–488–3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org*.

The agenda will include various IRS issues.

Dated: June 13, 2012.

Louis Morizio,

Acting TAP Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–14971 Filed 6–19–12; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 77 Wednesday,
No. 119 June 20, 2012

Part II

Department of Justice

28 CFR Part 115
National Standards To Prevent, Detect, and Respond to Prison Rape; Final Rule

DEPARTMENT OF JUSTICE

28 CFR Part 115

[Docket No. OAG–131; AG Order No. 3331–2012]

RIN 1105–AB34

National Standards To Prevent, Detect, and Respond to Prison Rape

AGENCY: Department of Justice.

ACTION: Final rule; request for comment on specific issue.

SUMMARY: The Department of Justice (Department) is issuing a final rule adopting national standards to prevent, detect, and respond to prison rape, as required by the Prison Rape Elimination Act of 2003 (PREA). In addition, the Department is requesting comment on one issue relating to staffing in juvenile facilities. Further discussion of the final rule is found in the Executive Summary.

DATES: This rule is effective August 20, 2012. Comments on the juvenile staffing ratios set forth in § 115.313 must be submitted electronically or postmarked no later than 11:59 p.m. on August 20, 2012.

ADDRESSES: To ensure proper handling of solicited additional comments, please reference ''Docket No. OAG–131'' on all written and electronic correspondence. Written comments being sent through regular or express mail should be sent to Robert Hinchman, Senior Counsel, Office of Legal Policy, Department of Justice, 950 Pennsylvania Avenue NW., Room 4252, Washington, DC 20530. Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. The Department will accept attachments to electronic comments in Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats only. The Department will not accept any file formats other than those specifically listed here.

Please note that the Department is requesting that electronic comments be submitted before midnight Eastern Time on the day the comment period closes because *http://www.regulations.gov* terminates the public's ability to submit comments at midnight Eastern Time on the day the comment period closes. Commenters in time zones other than Eastern Time may want to consider this so that their electronic comments are received. All comments sent through regular or express mail will be considered timely if postmarked on or before the day the comment period closes.

Posting of Solicited Additional Public Comments: Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the Department's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

You are not required to submit personal identifying information in order to comment on this rule. Nevertheless, if you still want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the Department's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION** paragraph.

FOR FURTHER INFORMATION CONTACT: Robert Hinchman, Senior Counsel, Office of Legal Policy, Department of Justice, 950 Pennsylvania Avenue NW., Room 4252, Washington, DC 20530; telephone: (202) 514–8059. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Overview

The goal of this rulemaking is to prevent, detect, and respond to sexual abuse in confinement facilities, pursuant to the Prison Rape Elimination Act of 2003. For too long, incidents of sexual abuse against incarcerated persons have not been taken as seriously as sexual abuse outside prison walls. In popular culture, prison rape is often the subject of jokes; in public discourse, it has been at times dismissed by some as an inevitable—or even deserved—consequence of criminality.

But sexual abuse is never a laughing matter, nor is it punishment for a crime. Rather, it *is* a crime, and it is no more tolerable when its victims have committed crimes of their own. Prison rape can have severe consequences for victims, for the security of correctional facilities, and for the safety and well-being of the communities to which nearly all incarcerated persons will eventually return.

In passing PREA, Congress noted that the nation was ''largely unaware of the epidemic character of prison rape and the day-to-day horror experienced by victimized inmates.'' 42 U.S.C. 15601(12). The legislation established a National Prison Rape Elimination Commission (NPREC) to ''carry out a comprehensive legal and factual study of the penalogical [*sic*], physical, mental, medical, social, and economic impacts of prison rape in the United States'' and to recommend to the Attorney General ''national standards for enhancing the detection, prevention, reduction, and punishment of prison rape.'' 42 U.S.C. 15606(d)(1), (e)(1). The statute defines ''prison'' as ''any confinement facility,'' including jails, police lockups, and juvenile facilities, and defines ''rape'' to include a broad range of unwanted sexual activity. 42 U.S.C. 15609(7) & (9). After over four years of work, the NPREC released its recommended national standards in June 2009 and subsequently disbanded, pursuant to the statute.

The statute directs the Attorney General to publish a final rule adopting ''national standards for the detection, prevention, reduction, and punishment of prison rape * * * based upon the independent judgment of the Attorney General, after giving due consideration to the recommended national standards provided by the Commission * * * and being informed by such data, opinions, and proposals that the Attorney General determines to be appropriate to consider.'' 42 U.S.C. 15607(a)(1)–(2). However, the standards may not ''impose substantial additional costs

compared to the costs presently expended by Federal, State, and local prison authorities.'' 42 U.S.C. 15607(a)(3).

The standards are to be immediately binding on the Federal Bureau of Prisons. 42 U.S.C. 15607(b). A State whose Governor does not certify full compliance with the standards is subject to the loss of five percent of any Department of Justice grant funds that it would otherwise receive for prison purposes, unless the Governor submits an assurance that such five percent will be used only for the purpose of enabling the State to achieve and certify full compliance with the standards in future years. 42 U.S.C. 15607(c). The final rule specifies that the Governor's certification applies to all facilities in the State under the operational control of the State's executive branch, including facilities operated by private entities on behalf of the State's executive branch.

In addition, any correctional accreditation organization that seeks Federal grants must adopt accreditation standards regarding sexual abuse that are consistent with the national standards in this final rule. 42 U.S.C. 15608.

In drafting the final rule, the Department balanced a number of competing considerations. In the current fiscal climate, governments at all levels face budgetary constraints. The Department has aimed to craft standards that will yield the maximum desired effect while minimizing the financial impact on jurisdictions. In addition, recognizing the unique characteristics of individual facilities, agencies, and inmate populations, the Department has endeavored to afford discretion and flexibility to agencies to the extent feasible.

The success of the PREA standards in combating sexual abuse in confinement facilities will depend on effective agency and facility leadership, and the development of an agency culture that prioritizes efforts to combat sexual abuse. Effective leadership and culture cannot, of course, be directly mandated by rule. Yet implementation of the standards will help foster a change in culture by institutionalizing policies and practices that bring these concerns to the fore.

Notably, the standards are generally not outcome-based, but rather focus on policies and procedures. While performance-based standards generally give regulated parties the flexibility to achieve regulatory objectives in the most cost-effective way, it is difficult to employ such standards effectively to combat sexual abuse in confinement facilities, where significant barriers exist to the reporting and investigating of such incidents. An increase in incidents reported to facility administrators might reflect increased abuse, or it might just reflect inmates' increased willingness to *report* abuse, due to the facility's success at assuring inmates that reporting will yield positive outcomes and not result in retaliation. Likewise, an increase in substantiated incidents could mean either that a facility is failing to protect inmates, or else simply that it has improved its effectiveness at investigating allegations. For these reasons, the standards generally aim to inculcate policies and procedures that will reduce and ameliorate bad outcomes, recognizing that one possible consequence of improved performance is that evidence of more incidents will come to light.

The standards are not intended to define the contours of constitutionally required conditions of confinement. Accordingly, compliance with the standards does not establish a safe harbor with regard to otherwise constitutionally deficient conditions involving inmate sexual abuse. Furthermore, while the standards aim to include a variety of best practices, they do not incorporate every promising avenue of combating sexual abuse, due to the need to adopt national standards applicable to a wide range of facilities, while taking costs into consideration. The standards consist of policies and practices that are attainable by all affected agencies, recognizing that agencies can, and some currently do, exceed the standards in a variety of ways. The Department applauds such efforts, encourages agencies to adopt or continue best practices that exceed the standards, and intends to support further the identification and adoption of innovative methods to protect inmates from harm. As described in the Background section, the Department is continuing its efforts to fund training, technical assistance, and other support for agencies, including through a National Resource Center for the Elimination of Prison Rape.

Because the purposes and operations of various types of confinement facilities differ significantly, there are four distinct sets of standards, each corresponding to a different type of facility: Adult prisons and jails (§§ 115.11–115.93); lockups (§§ 115.111–115.193); community confinement facilities (§§ 115.211–115.293); and juvenile facilities (§§ 115.311–115.393). The standards also include unified sections on definitions (§§ 115.5–115.6) and on audits and State compliance (§§ 115.401–115.405, 115.501).[1]

The standards contained in this final rule apply to facilities operated by, or on behalf of, State and local governments and the Department of Justice. However, in contrast to the proposed rule, the final rule concludes that PREA encompasses all Federal confinement facilities. Given their statutory authorities to regulate conditions of detention, other Federal departments with confinement facilities (including but not limited to the Department of Homeland Security) will work with the Attorney General to issue rules or procedures that will satisfy the requirements of PREA. 42 U.S.C. 15607(a)(2).

B. Summary of Major Provisions

This summary of the major provisions of the standards does not include every single aspect of the standards, nor does it capture all distinctions drawn in the standards on the basis of facility type or size. Agencies that are covered by each set of standards should read them in full rather than rely exclusively on this summary.

General Prevention Planning. To ensure that preventing sexual abuse receives appropriate attention, the standards require that each agency and facility designate a PREA point person with sufficient time and authority to coordinate compliance efforts. Facilities may not hire or promote persons who have committed sexual abuse in an institutional setting or who have been adjudicated to have done so in the community, and must perform background checks on prospective and current employees, unless a system is in place to capture such information for current employees. A public agency that contracts for the confinement of its inmates with outside entities must include in any new contracts or contract renewals the entity's obligation to adopt and comply with the PREA standards.

Supervision and Monitoring. The standards require each facility to develop and document a staffing plan, taking into account a set of specified factors, that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect inmates against sexual abuse. The staffing standard further requires all agencies to annually

[1] The standards themselves refer to persons confined in prisons and jails as ''inmates,'' persons confined in lockups as ''detainees,'' and persons confined in juvenile facilities or community confinement facilities as ''residents.'' For simplicity, however, the discussion and explanation of the standards refer collectively to all such persons as ''inmates'' except where specifically discussing lockups, juvenile facilities, or community confinement facilities.

assess, determine, and document whether adjustments are needed to the staffing levels or deployment of monitoring technologies.

Due to the great variation across facilities in terms of size, physical layout, and composition of the inmate population, it would be impractical to require a specified level of staffing. Likewise, mandating a subjective standard such as ''adequate staffing'' would be extremely difficult to measure. Instead, the final standard requires that prisons and jails use their best efforts to comply with the staffing plan on a regular basis and document and justify any deviations. Given that staffing increases often depend on budget approval from an external legislative or other governmental entity, this revision is designed to support proper staffing without discouraging agencies from attempting to comply with the PREA standards due to financial concerns.

The ''best efforts'' language encourages agencies to compose the most appropriate staffing plan for each facility without incentivizing agencies to set the bar artificially low in order to avoid non-compliance. But if the facility's plan is plainly deficient on its face, the facility is not in compliance with this standard even if it adheres to its plan.

In addition, the standards contained in the final rule require that supervisors conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment.

Staffing of Juvenile Facilities. The standards set minimum staffing levels for certain juvenile facilities. As discussed in greater detail in the appropriate section below, the Department seeks additional comment on this aspect of the standards, and may make changes if warranted in light of public comments received. Specifically, the standards require secure juvenile facilities—*i.e.,* those that do not allow residents access to the community—to maintain minimum security staff ratios of 1:8 during resident waking hours, and 1:16 during resident sleeping hours, except during limited and discrete exigent circumstances; deviations from the staffing plan in such circumstances must be documented. Because increasing staffing levels takes time and money, this requirement does not go into effect until October 2017 except for facilities that are already obligated by law, regulation, or judicial consent decree to maintain at least 1:8 and 1:16 ratios.

Juveniles in Adult Facilities. The final rule, unlike the proposed rule and the NPREC's recommended standards, contains a standard that governs the placement of juveniles in adult facilities. The standard applies only to persons under the age of 18 who are under adult court supervision and incarcerated or detained in a prison, jail, or lockup. Such persons are, for the purposes of this standard, referred to as ''youthful inmates'' (or, in lockups, ''youthful detainees''). By contrast, youth in the juvenile justice system are already protected by the Juvenile Justice and Delinquency Prevention Act (JJDPA), 42 U.S.C. 5601 *et seq.,* which provides formula grants to States conditioned on (subject to minimal exceptions) separating juveniles from adults in secure facilities and removing juveniles from adult jails and lockups.

This standard imposes three requirements upon the placement of youthful inmates in prisons or jails. First, no inmate under 18 may be placed in a housing unit where contact will occur with adult inmates in a common space, shower area, or sleeping quarters. Second, outside of housing units, agencies must either maintain ''sight and sound separation''—*i.e.,* preventing adult inmates from seeing or communicating with youth—or provide direct staff supervision when the two are together. Third, agencies must make their best efforts to avoid placing youthful inmates in isolation to comply with this provision and, absent exigent circumstances, must afford them daily large-muscle exercise and any legally required special education services, and must provide them access to other programs and work opportunities to the extent possible. With regards to lockups, the standard requires that juveniles and youthful detainees be held separately from adult inmates.

While some commenters asserted that, in addition to increasing risk of victimization, confining youth in adult facilities impedes access to age-appropriate programming and services and may actually increase recidivism, the Department is cognizant that its mandate in promulgating these standards extends only to preventing, detecting, and responding to sexual abuse in confinement facilities. In addition, imposing a general prohibition on the placement of youth in adult facilities, or disallowing such placements unless a court finds that the youth has been violent or disruptive in a juvenile facility, would necessarily require a fundamental restructuring of existing State laws that permit or require such placement. Given the current state of knowledge regarding youth in adult facilities, and the availability of more narrowly tailored approaches to protecting youth, the Department has decided not to impose a complete ban at this time through the PREA standards. The Department has supported, however, congressional efforts to amend the JJDPA to extend its jail removal requirements to apply to youth under adult criminal court jurisdiction awaiting trial, unless a court specifically finds that it is in the interest of justice to incarcerate the youth in an adult facility.

Cross-Gender Searches and Viewing. In a change from the proposed standards, the final standards include a phased-in ban on cross-gender pat-down searches of female inmates in adult prisons, jails, and community confinement facilities absent exigent circumstances—which is currently the policy in most State prison systems. However, female inmates' access to programming and out-of-cell opportunities must not be restricted to comply with this provision.

For juvenile facilities, however, the final standards, like the proposed standards, prohibit cross-gender pat-down searches of both female and male residents. And for all facilities, the standards prohibit cross-gender strip searches and visual body cavity searches except in exigent circumstances or when performed by medical practitioners, in which case the searches must be documented.

The standards also require facilities to implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. In addition, facilities must require staff of the opposite gender to announce their presence when entering an inmate housing unit.

Training and Education. Proper training is essential to combating sexual abuse in correctional facilities. The standards require staff training on key topics related to preventing, detecting, and responding to sexual abuse. Investigators and medical practitioners will receive training tailored to their specific roles.

Inmates, too, must understand a facility's policies and procedures in order to know that they will be kept safe and that the facility will not tolerate their committing sexual abuse. The standards require that facilities explain their zero-tolerance policy regarding sexual abuse and sexual harassment educate inmates on how to report any such incidents.

Screening. The standards require that inmates be screened for risk of being sexually abused or sexually abusive and

that screening information be used to inform housing, bed, work, education, and program assignments. The goal is to keep inmates at high risk of victimization away from those at high risk of committing abuse. However, facilities may not simply place victims in segregated housing against their will unless a determination has been made that there is no available alternative means of separation, and even then only under specified conditions and with periodic reassessment.

Reporting. The standards require that agencies provide at least two internal reporting avenues, and at least one way to report abuse to a public or private entity or office that is not part of the agency and that can allow inmates to remain anonymous upon request. An agency must also provide a way for third parties to report such abuse on behalf of an inmate.

In addition, agencies are required to provide inmates with access to outside victim advocates for emotional support services related to sexual abuse, by giving inmates contact information for local, State, or national victim advocacy or rape crisis organizations and by enabling reasonable communication between inmates and these organizations, with as much confidentiality as possible.

Responsive Planning. The standards require facilities to prepare a written plan to coordinate actions taken among staff first responders, medical and mental health practitioners, investigators, and facility leadership in response to an incident of sexual abuse. Upon learning of an allegation of abuse, staff must separate the alleged victim and abuser and take steps to preserve evidence.

The standards also require agencies to develop policies to prevent and detect any retaliation against persons who report sexual abuse or who cooperate with investigations. Allegations must be investigated properly, thoroughly, and objectively, and documented correspondingly, and must be deemed substantiated if supported by a preponderance of the evidence. No agency may require an inmate to submit to a polygraph examination as a condition for proceeding with an investigation. Nor may an agency enter into or renew any agreement that limits its ability to remove alleged staff abusers from contact with inmates pending an investigation or disciplinary determination.

Investigations. Investigations are required to follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions. The agency must offer victims no-cost access to forensic medical examinations where evidentiarily or medically appropriate. In addition, the agency must attempt to make available a victim advocate from a rape crisis center. If that option is not available, the agency must provide such services through either (1) qualified staff from other community-based organizations or (2) a qualified agency staff member.

Discipline. The standards require that staff be subject to discipline for violating agency policies regarding sexual abuse, with termination the presumptive discipline for actually engaging in sexual abuse. Terminations or resignations linked to violating such policies are to be reported to law enforcement (unless the conduct was clearly not criminal) and to relevant licensing bodies.

Inmates also will be subject to disciplinary action for committing sexual abuse. Where an inmate is found to have engaged in sexual contact with a staff member, the inmate may be disciplined only where the staff member did not consent. Where two inmates have engaged in sexual contact, the agency may (as the final rule clarifies) impose discipline for violating any agency policy against such contact, but may deem such activity to constitute sexual abuse only if it determines that the activity was not consensual. In other words, upon encountering two inmates engaging in sexual activity, the agency cannot simply assume that both have committed sexual abuse.

Medical and Mental Health Care. The standards require that facilities provide timely, unimpeded access to emergency medical treatment and crisis intervention services, whose nature and scope are determined by practitioners according to their professional judgment. Inmate victims of sexual abuse while incarcerated must be offered timely information about, and timely access to, emergency contraception and sexually transmitted infections prophylaxis, where medically appropriate. Where relevant, inmate victims must also receive comprehensive information about, and timely access to, all lawful pregnancy-related medical services. In addition, facilities are required to offer a follow-up meeting if the initial screening at intake indicates that the inmate has experienced or perpetrated sexual abuse.

Grievances. If an agency has a grievance process for inmates who allege sexual abuse, the agency may not impose a time limit on when an inmate may submit a grievance regarding such allegations. To be sure, a grievance system cannot be the only method—and should not be the primary method—for inmates to report abuse. As noted above, agencies must provide multiple internal ways to report abuse, as well as access to an external reporting channel.

This standard exists only because the Prison Litigation Reform Act, 42 U.S.C. 1997e, requires that inmates exhaust any available administrative remedies as a prerequisite to filing suit under Federal law with respect to the conditions of their confinement. The final standard contains a variety of other provisions aimed at ensuring that grievance procedures that cover sexual abuse provide inmates with a full and fair opportunity to preserve their ability to seek judicial review, without imposing undue burdens on agencies or facilities. However, agencies that exempt sexual abuse allegations from their remedial schemes are exempt from this standard, because their inmates may proceed directly to court.

Audits. The final rule resolves an issue left undecided in the proposed rule by including standards that require that agencies ensure that each of their facilities is audited once every three years. Audits must be conducted by: (1) A member of a correctional monitoring body that is not part of, or under the authority of, the agency (but may be part of, or authorized by, the relevant State or local government); (2) a member of an auditing entity such as an inspector general's or ombudsperson's office that is external to the agency; or (3) other outside individuals with relevant experience. Thus, the final standards differ from the proposed standards in that audits may not be conducted by an internal inspector general or ombudsperson who reports directly to the agency head or to the agency's governing board.

The Department will develop and issue an audit instrument that will provide guidance on the conduct of and contents of the audit. All auditors must be certified by the Department, pursuant to procedures, including training requirements, to be issued subsequently.

Lesbian, Gay, Bisexual, Transgender, Intersex (LGBTI) and Gender Nonconforming Inmates. The standards account in various ways for the particular vulnerabilities of inmates who are LGBTI or whose appearance or manner does not conform to traditional gender expectations. The standards require training in effective and professional communication with LGBTI and gender nonconforming inmates and require the screening process to consider whether the inmate is, or is perceived to be, LGBTI or

gender nonconforming. The standards also require that post-incident reviews consider whether the incident was motivated by LGBTI identification, status, or perceived status.

In addition, in a change from the proposed rule, the final standards do not allow placement of LGBTI inmates in dedicated facilities, units, or wings in adult prisons, jails, or community confinement facilities solely on the basis of such identification or status, unless such placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates. As in the proposed standards, such placement is not allowed at all in juvenile facilities.

The standards impose a complete ban on searching or physically examining a transgender or intersex inmate for the sole purpose of determining the inmate's genital status. Agencies must train security staff in conducting professional and respectful cross-gender pat-down searches and searches of transgender and intersex inmates.

In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, an agency may not simply assign the inmate to a facility based on genital status. Rather, the agency must consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems, giving serious consideration to the inmate's own views regarding his or her own safety. In addition, transgender and intersex inmates must be given the opportunity to shower separately from other inmates.

Inmates with Disabilities and Limited English Proficient (LEP) Inmates. The standards require agencies to develop methods to ensure effective communication with inmates who are deaf or hard of hearing, those who are blind or have low vision, and those who have intellectual, psychiatric, or speech disabilities. Agencies also must take reasonable steps to ensure meaningful access to all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment to inmates who are LEP. Agencies may not rely on inmate interpreters or readers except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the inmate's safety, the performance of first-response duties, or an investigation.

C. Costs and Benefits

The anticipated costs of full nationwide compliance with the final rule, as well as the benefits of reducing the prevalence of prison rape, are discussed at length in the Regulatory Impact Assessment (RIA), which is available at *http://www.ojp.usdoj.gov/programs/pdfs/prea_ria.pdf* and is summarized below in section IV, entitled ''Executive Orders 13563 and 12866—Regulatory Planning and Review.'' As shown in Table 1, the Department estimates that the costs of these standards to all covered facilities, assuming full nationwide compliance, would be approximately $6.9 billion over the period 2012–2026, or $468.5 million per year when annualized at a 7 percent discount rate. The average annualized cost per facility of compliance with the standards is approximately $55,000 for prisons, $50,000 for jails, $24,000 for community confinement facilities, and $54,000 for juvenile facilities. For lockups, the average annualized cost per agency is estimated at $16,000.

TABLE 1—ESTIMATED COST OF FULL STATE AND LOCAL COMPLIANCE WITH THE PREA STANDARDS, IN THE AGGREGATE, BY YEAR AND BY FACILITY TYPE, IN MILLIONS OF DOLLARS

Year	Prisons	Jails	Lockups	CCF	Juveniles	Total all facilities
2012	$87.2	$254.6	$180.1	$27.8	$196.0	$745.8
2013	55.2	161.0	122.0	16.8	93.3	448.5
2014	58.3	157.9	106.6	14.2	92.1	429.2
2015	59.2	154.6	93.7	12.1	94.9	414.5
2016	61.3	153.5	87.3	11.1	109.3	422.6
2017	61.5	152.4	83.6	10.6	151.9	460.1
2018	62.9	151.3	80.1	10.1	147.3	451.8
2019	63.1	150.7	77.5	9.8	144.7	445.8
2020	64.3	150.1	75.0	9.4	142.2	441.0
2021	65.7	149.9	73.2	9.2	140.4	438.3
2022	65.9	150.1	72.0	9.0	139.2	436.2
2023	67.1	150.1	70.8	8.9	138.0	434.9
2024	67.1	149.9	69.6	8.7	136.7	432.0
2025	67.9	149.5	68.4	8.5	135.5	429.8
2026	67.6	148.8	67.2	8.4	134.3	426.3
15-yr Total	974.2	2,384.6	1,327.3	174.8	1,995.8	6,856.7
Present Value	591.2	1,488.4	869.8	116.6	1,201.4	4,267.4
Annual	64.9	163.4	95.5	12.8	131.9	468.5

However, these figures are potentially misleading. PREA does not require State and local facilities to comply with the Department's standards, nor does it enact a mechanism for the Department to direct or enforce such compliance; instead, the statute provides certain incentives for such confinement facilities to implement the standards. Fiscal realities faced by confinement facilities throughout the country make it virtually certain that the total actual outlays by those facilities will, in the aggregate, be less than the full nationwide compliance costs calculated in the RIA. Actual outlays incurred will depend on the specific choices that State and local correctional agencies make with regard to adoption of the standards, and correspondingly on the annual expenditures that those agencies are willing and able to make in choosing to implement the standards in their facilities. The Department has not endeavored in the RIA to project those actual outlays.

With respect to benefits, the RIA conducts what is known as a ''break-even analysis,'' by first estimating the monetary value of preventing various

types of prison sexual abuse (from incidents involving violence to inappropriate touching) and then, using those values, calculating the reduction in the annual number of victims that would need to occur for the benefits of the rule to equal the cost of full nationwide compliance.

This analysis begins by estimating the current levels of sexual abuse in covered facilities. The RIA concludes that in 2008 more than 209,400 persons were victims of sexual abuse in prisons, jails, and juvenile facilities, of which at least 78,500 prison and jail inmates and 4,300 youth in juvenile facilities were victims of the most serious forms of sexual abuse, including forcible rape and other nonconsensual sexual acts involving injury, force, or high incidence.

Next, the RIA estimates how much monetary benefit (to the victim and to society) accrues from reducing the annual number of victims of prison rape. This is, of course, an imperfect endeavor, given the inherent difficulty in assigning a dollar figure to the cost of such an event. Executive Order 13563 states that agencies ''may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.'' Each of these values is relevant here, including human dignity, which is offended by acts of sexual violence. While recognizing the limits of monetary measures and the difficulty of translation into dollar equivalents, the RIA extrapolates from the existing economic and criminological literature regarding rape in the community. On the basis of such extrapolations, it finds that the monetizable benefit to an adult of avoiding the highest category of prison sexual misconduct (nonconsensual sexual acts involving injury or force, or no injury or force but high incidence) is worth $310,000 to $480,000 per victim; for juveniles, who typically experience significantly greater injury from sexual abuse than do adults, the corresponding category is assessed as worth $675,000 per victim. Lesser forms of sexual abuse have correspondingly lower avoidance benefit values. The RIA thus determines that the maximum monetizable cost to society of prison rape and sexual abuse (and correspondingly, the total maximum benefit of eliminating it) is about $46.6 billion annually for prisons and jails, and an additional $5.2 billion annually for juvenile facilities.

The RIA concludes that the break-even point would be reached if the standards reduced the annual number of victims of prison rape by 1,671 from the baseline levels, which is less than 1 percent of the total number of victims in prisons, jails, and juvenile facilities. The Department believes it reasonable to expect that the standards, if fully adopted and complied with, would achieve at least this level of reduction in the prevalence of sexual abuse, and thus the benefits of the rule justify the costs of full nationwide compliance.

As noted, this analysis inevitably excludes benefits that are not monetizable, but still must be included in a cost-benefit analysis. These include the values of equity, human dignity, and fairness. Such non-quantifiable benefits will be received by victims who receive proper treatment after an assault; such treatment will in turn enhance their ability to re-integrate into the community and maintain stable employment upon their release from prison. Furthermore, making prisons safer will increase the general well-being and morale of staff and inmates alike. Finally, non-quantifiable benefits will accrue to society at large, by ensuring that inmates re-entering the community are less traumatized and better equipped to support their community. Thus, the true break-even level would likely be lower and perhaps significantly lower than 1,671, if it were possible to account for these non-quantifiable benefits.

II. Background

The Prison Rape Elimination Act of 2003, 42 U.S.C. 15601 *et seq.,* requires the Attorney General to promulgate regulations that adopt national standards for the detection, prevention, reduction, and punishment of prison rape. PREA established the National Prison Rape Elimination Commission to carry out a comprehensive legal and factual study of the penological, physical, mental, medical, social, and economic impacts of prison rape in the United States, and to recommend national standards to the Attorney General and to the Secretary of Health and Human Services. The NPREC released its recommended national standards in a report dated June 23, 2009, and subsequently disbanded, pursuant to the statute. The NPREC's report and recommended national standards are available at *http://www.ncjrs.gov/pdffiles1/226680.pdf.*

The NPREC set forth four sets of recommended national standards for eliminating prison rape and other forms of sexual abuse. Each set applied to one of the following four confinement settings: (1) Adult prisons and jails; (2) juvenile facilities; (3) community corrections facilities; and (4) lockups (*i.e.,* temporary holding facilities). The NPREC recommended that its standards apply to Federal, State, and local correctional and detention facilities, including immigration detention facilities operated by the Department of Homeland Security and the Department of Health and Human Services. In addition to the standards themselves, the NPREC prepared assessment checklists, designed as tools to provide agencies and facilities with examples of how to meet the standards' requirements; glossaries of key terms; and discussion sections providing explanations of the rationale for each standard and, in some cases, guidance for achieving compliance. These are available at *http://www.ncjrs.gov/pdffiles1/226682.pdf* (adult prisons and jails), *http://www.ncjrs.gov/pdffiles1/226684.pdf* (juvenile facilities), *http://www.ncjrs.gov/pdffiles1/226683.pdf* (community corrections), and *http://www.ncjrs.gov/pdffiles1/226685.pdf* (lockups).

Pursuant to PREA, the final rule adopting national standards ''shall be based upon the independent judgment of the Attorney General, after giving due consideration to the recommended national standards provided by the Commission * * * and being informed by such data, opinions, and proposals that the Attorney General determines to be appropriate to consider.'' 42 U.S.C. 15607(a)(2). PREA expressly mandates that the Department not establish a national standard ''that would impose substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities.'' 42 U.S.C. 15607(a)(3). The Department ''may, however, provide a list of improvements for consideration by correctional facilities.'' 42 U.S.C. 15607(a)(3).

The Attorney General established a PREA Working Group, chaired by the Office of the Deputy Attorney General, to review each of the NPREC's proposed standards and to assist him in preparing rulemaking materials. The Working Group included representatives from a wide range of Department components, including the Access to Justice Initiative, the Bureau of Prisons (including the National Institute of Corrections), the Civil Rights Division, the Executive Office for United States Attorneys, the Office of Legal Policy, the Office of Legislative Affairs, the Office of Justice Programs (including the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime), the Office on Violence Against Women, and the United States Marshals Service.

The Working Group conducted an in-depth review of the standards proposed by the NPREC. As part of that process, the Working Group conducted a number of listening sessions in 2010, at which a wide variety of individuals and groups provided preliminary input prior to the start of the regulatory process. Participants included representatives of State and local prisons and jails, juvenile facilities, community corrections programs, lockups, State and local sexual abuse associations and service providers, national advocacy groups, survivors of prison rape, and members of the NPREC.

Because, as noted above, PREA prohibits the Department from establishing a national standard that would impose substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities, the Working Group carefully examined the potential cost implications of the standards proposed by the NPREC. As part of that process, the Department commissioned an independent contractor to perform a cost analysis of the NPREC's proposed standards.

On March 10, 2010 (75 FR 11077), while awaiting completion of the cost analysis, the Department published an Advance Notice of Proposed Rulemaking (ANPRM) soliciting public input on the NPREC's proposed national standards. Approximately 650 comments were received on the ANPRM, including comments from current or formerly incarcerated individuals, county sheriffs, State correctional agencies, private citizens, professional organizations, social service providers, and advocacy organizations concerned with issues involving inmate safety and rights, sexual violence, discrimination, and juvenile justice.

In general, commenters supported the broad goals of PREA and the overall intent of the NPREC's recommendations. However, comments were sharply divided as to the merits of a number of standards. Some commenters, particularly those whose responsibilities involve the care and custody of inmates or juvenile residents, expressed concern that the NPREC's recommended national standards implementing PREA would impose unduly burdensome costs on already tight State and local government budgets. Other commenters, particularly advocacy groups concerned with protecting the health and safety of inmates and juvenile residents, expressed concern that the NPREC's standards did not go far enough, and, therefore, would not fully achieve PREA's goals.

After reviewing the comments on the NPREC's proposed standards, and after receiving and reviewing the cost analysis of those standards, the Department published a Notice of Proposed Rulemaking (NPRM) on February 3, 2011 (76 FR 6248). The scope and content of the Department's standards differed substantially from the NPREC's proposals in a variety of areas. The Department revised each of the NPREC's recommended standards, weighing the logistical and financial feasibility of each standard against its anticipated benefits. At the same time, the Department published an Initial Regulatory Impact Analysis (IRIA), which presented a comprehensive assessment of the benefits and costs of the Department's proposed standards in both quantitative and qualitative terms. The IRIA was summarized in the NPRM and was published in full on the Department's Web site at *http://www.ojp.usdoj.gov/programs/pdfs/prea_nprm_iria.pdf.*

The NPRM solicited comments on the Department's proposed standards, and posed 64 specific questions on the proposed standards and the IRIA. In response, the Department received over 1,300 comments, representing the same broad range of stakeholders as comments on the ANPRM. Commenters provided general assessments of the Department's efforts as well as specific and detailed recommendations regarding each standard. The Department also received a range of comments responding to the 64 questions posed in the NPRM and on the assumptions, calculations, and conclusions contained in the IRIA. As in the comments on the ANPRM, the changes recommended by commenters reflected a diverse array of views. Many commenters asserted that the proposed standards provided insufficient protection against sexual abuse, while others expressed the view that the proposed standards would be too onerous for correctional agencies.

Following the public comment period, the Department carefully reviewed each comment and deliberated internally on the revisions that the commenters proposed and on the critiques of the IRIA's benefit-cost analysis. In addition, the Department once again commissioned an independent contractor to assist the Department in assessing the costs of revisions to the standards.

The final standards reflect a considered analysis of the public comments and a rigorous assessment of the estimated benefits and costs of full nationwide compliance with the standards. The Department has revised the IRIA correspondingly; the final Regulatory Impact Analysis is available at *http://www.ojp.usdoj.gov/programs/pdfs/prea_ria.pdf.*

This is a final rule; however, the Department has identified one provision for which it is considering making changes to the final rule, if warranted by public comments received. The discrete provision open for additional comment does not affect the finality of the rule.

To assist agencies in their compliance efforts, the Department has funded the National Resource Center for the Elimination of Prison Rape to serve as a national source for online and direct support, training, technical assistance, and research to assist adult and juvenile corrections, detention, and law enforcement professionals in combating sexual abuse in confinement. Focusing on areas such as prevention strategies, improved reporting and detection, investigation, prosecution, and victim-centered responses, the Resource Center will identify promising programs and practices that have been implemented around the country and demonstrate models for keeping inmates safe from sexual abuse. It will offer a full library, webinars, and other online resources on its Web site, and will provide direct assistance in the field through skilled and experienced training and technical assistance providers. The Department also funds the National Center for Youth in Custody, which will partner closely with the Resource Center to assist facilities in addressing sexual safety for youth.

The Department is also continuing its grantmaking, through its Bureau of Justice Assistance, to support State and local demonstration projects aimed at combating sexual abuse in confinement facilities. In addition, the Department's National Institute of Corrections, which has provided substantial PREA-related training and technical assistance since passage of the Act, will be developing electronic and web-based resource materials aimed at reaching a broad audience.

III. Overview of PREA National Standards

Scope of Standards: Application to Other Federal Confinement Facilities

The proposed rule interpreted the statute to bind only facilities operated by the Bureau of Prisons, and extended the standards to United States Marshals Service facilities under other authorities of the Attorney General. In light of comments on the proposed rule, the Department has re-examined whether

PREA extends to Federal facilities beyond those operated by the Department of Justice. The Department now concludes that PREA does, in fact, encompass *any* Federal confinement facility ''whether administered by [the] government or by a private organization on behalf of such government,'' 42 U.S.C. 15609(7).

With respect to Bureau of Prisons facilities, the Act explicitly provides that the national standards apply immediately. 42 U.S.C. 15607(b). However, the statute does not address how it will be implemented at other Federal confinement facilities. In general, each Federal agency is accountable for, and has statutory authority to regulate, the operations of its own facilities and, therefore, is best positioned to determine how to implement the Federal laws and rules that govern its own operations, the conduct of its own employees, and the safety of persons in its custody. For example, the Department of Homeland Security possesses great knowledge and experience regarding the specific characteristics of its immigration facilities, which differ in certain respects from Department of Justice, State, and local facilities with regard to the manner in which they are operated and the composition of their populations. Indeed, the NPREC expressly recognized these distinctions by including a supplemental set of 15 standards applicable only to facilities with immigration detainees. Similarly, the Department of the Interior's Bureau of Indian Affairs (BIA) possesses expertise regarding the various confinement facilities in Indian country, which are owned and operated pursuant to numerous different arrangements by BIA and the tribes, and which also differ in certain respects from Department of Justice, State, and local facilities.

Given their statutory authorities to regulate conditions of detention, other Federal departments with confinement facilities will work with the Attorney General to issue rules or procedures that will satisfy the requirements of PREA. 42 U.S.C. 15607(a)(2).

Scope of Standards: Pretrial Release, Probation, Parole, and Related Programs

In the proposed rule, the Department declined to adopt the NPREC's recommendation that the Department adopt a set of standards for community corrections, which the NPREC had recommended defining as follows: ''Supervision of individuals, whether adults or juveniles, in a community setting as a condition of incarceration, pretrial release, probation, parole, or post-release supervision. These settings would include day and evening reporting centers.'' [2] The Department determined that to the extent this definition included supervision of individuals in a non-residential setting, it exceeded the scope of PREA's definitions of jail and prison, which include only ''confinement facilit[ies].'' 42 U.S.C. 15609(3), (7). Accordingly, the proposed rule did not reference community corrections, but instead proposed adopting a set of standards for ''community confinement facilities,'' defined as

> a community treatment center, halfway house, restitution center, mental health facility, alcohol or drug rehabilitation center, or other community correctional facility (including residential re-entry centers) in which offenders or defendants reside as part of a term of imprisonment or as a condition of pre-trial release or post-release supervision, while participating in gainful employment, employment search efforts, community service, vocational training, treatment, educational programs, or similar facility-approved programs during nonresidential hours.

Several commenters criticized the proposed rule for excluding individuals who are not incarcerated but are subject to pretrial release, probation, parole, or post-release supervision. These commenters included advocacy groups, certain former members of the NPREC, and two trade organizations, the American Probation and Parole Association and the International Community Corrections Association. Commenters observed that parole and probation officers play a significant role in the lives of their charges, and that such power includes the potential for abuse. Some suggested that the Department should adopt all of the NPREC's recommendations with regard to pretrial release, probation, parole, or post-release supervision, while others proposed including only certain training requirements related to handling disclosures of sexual abuse and avoiding inappropriate relationships with probationers and parolees.

The final rule does not include these suggested changes and instead retains the definition quoted above. The Department recognizes, of course, that staff involved in pretrial release, probation, parole, or post-release supervision exert great authority. The same is true, however, of numerous other government officials, including police officers who operate in the community, law enforcement investigators, and certain categories of civil caseworkers. While any abuse by law enforcement officials or other government agents is reprehensible, PREA appropriately addresses the unique vulnerability of incarcerated persons, who literally cannot escape their abusers and who lack the ability to access community resources available to most victims of sexual abuse.

One commenter observed that PREA defines ''prison rape'' as including ''the rape of an inmate in the actual or constructive control of prison officials,'' 42 U.S.C. 15609(8), and suggested that a probationer or parolee should be considered to be under the constructive control of correctional officials. This suggestion, however, neglects the statute's definition of ''inmate'' as ''any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.'' 42 U.S.C. 15609(2). An inmate by definition is ''incarcerated or detained in [a] facility''; the inclusion of inmates who are ''under the constructive control of correctional officials'' presumably refers to inmates who are temporarily supervised by others, such as inmates on work details. Furthermore, the reference to parole, probation, and related programs in the definition of ''inmate'' indicates that only a person who ''violate[s] * * * the terms and conditions'' of such a program, rather than any person who is subject to such terms and conditions, qualifies as an inmate. Indeed, with the exception of an unrelated grant program to safeguard communities,[3] the statute makes no other reference to parole, probation, pretrial release, or diversionary programs.

The same commenter noted that PREA instructed the NPREC to recommend to the Attorney General national standards on, in addition to specifically enumerated topics, ''such other matters as may reasonably be related to the detection, prevention, reduction, and punishment of prison rape.'' 42 U.S.C. 15606(e)(2)(M). The

[2] NPREC, *Standards for the Prevention, Detection, Response, and Monitoring of Sexual Abuse in Community Corrections, 5,* available at *http://www.ncjrs.gov/pdffiles1/226683.pdf.*

[3] The statute authorizes the Attorney General to make grants to States to ''safeguard the communities to which inmates return'' by, among other things, ''preparing maps demonstrating the concentration, on a community-by-community basis, of inmates who have been released, to facilitate the efficient and effective * * * deployment of law enforcement resources (including probation and parole resources),'' and ''developing policies and programs that reduce spending on prisons by effectively reducing rates of parole and probation revocation without compromising public safety.'' 42 U.S.C. 15605(b)(2)(C), (E).

Department agrees with the commenter that this language, by extension, provides the Attorney General with a broad scope of authority to combat sexual abuse in confinement facilities. However, this language does not necessitate the adoption of standards to govern probation, parole, pretrial release, or diversionary programs. To be sure, former inmates may report to a parole officer sexual abuse that occurred while they were in a confinement facility. However, former inmates—unlike current inmates—generally possess ample ability to report abuse through the same channels as any other person living in the community.

Still, the Department encourages probation and parole departments to take active steps to ensure that any information they learn about sexual abuse in confinement facilities is transmitted to law enforcement authorities or correctional agencies, as appropriate. The Department recommends that such departments train their officers as needed to facilitate proper investigation of allegations.

Finally, one commenter suggested that probation departments should be included because some probation departments operate residential facilities, including juvenile detention facilities. No change is warranted, because the proposed rule already included any agency that operates residential facilities. For example, to the extent that a probation department operates a juvenile detention facility, it is covered by the Standards for Juvenile Facilities, § 115.311 *et seq.*

Scope of Standards: Categorization of Prisons and Jails

The Department received a significant number of comments from jails regarding the ways in which their operations differ from prisons. Jail commenters noted that prisons, unlike jails, generally receive individuals after sentencing. Thus, prison inmates have already been stabilized medically and been searched before being transported to the prison. Commenters noted that the prison intake unit or facility, unlike its jail counterpart, will often have received information from the sentencing court, and may have received records documenting medical and mental health conditions, criminal and institutional histories, and in some cases, program or treatment histories.

The American Jail Association (AJA), plus several sheriffs and jail administrators, recommended that the Department develop separate standards for jails and prisons, due to differences in facility size, mission, length of stay, and operational considerations.

The Department recognizes the various differences between jails and prisons, but concludes that these differences do not warrant a separate set of standards. Rather, the Department has endeavored to provide sufficient flexibility such that the standards can be adopted by both prisons and jails. Where appropriate, various standards impose different requirements upon prisons and jails, while others differentiate on the basis of facility size.

General Definitions (§ 115.5)

Community confinement facility. Several commenters expressed uncertainty as to whether group homes that house juveniles would be governed by the standards for community confinement facilities, the standards for juvenile facilities, or both. For clarity, the final rule revises the definition of community confinement facility to expressly exclude juvenile facilities. All juvenile facilities, including group homes and halfway houses, are governed by the Standards for Juvenile Facilities, § 115.311 *et seq.*

Exigent circumstances. The final rule adds a definition of this term, which is used in several standards. The term is defined to mean ''any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of a facility.'' Such circumstances include, for example, the unforeseen absence of a staff member whose presence is indispensible to carrying out a specific standard, or an outbreak of violence within the facility that requires immediate action.

Full compliance. The final rule adds a definition of this statutory term. As discussed above in the Executive Summary and below in the section titled Executive Order 13132—Federalism, PREA provides that the Governor of each State must certify ''full compliance'' with the standards or else forfeit five percent of any Department of Justice grant funds that the State would otherwise receive for prison purposes, unless the Governor submits an assurance that such five percent will be used only for the purpose of enabling the State to achieve and certify full compliance with the standards in future years. 42 U.S.C. 15607(c).

NPRM Question 34 solicited comments on how the final rule should define ''full compliance.'' Several commenters recommended that full compliance be measured by a percentage of each standard complied with. These recommendations were generally between 80 and 100 percent. One commenter suggested that each standard be designated as either mandatory or non-mandatory, with differential percentages for each category. A number of comments recommended that full compliance mean complete compliance, with exceptions for *de minimis* violations.

A number of commenters recommended that ''full compliance'' be fully or partially contingent on certain outcome measures. In other words, ''full compliance'' could only be achieved if a certain objective level of safety and security is achieved in a facility.

Other commenters suggested that, instead of relying on ''full compliance,'' the standards should be measured using a multi-tiered approach, such as ''substantial compliance,'' ''partial compliance,'' ''non-compliance with progress,'' and ''non-compliance.'' One commenter recommended that ''full compliance'' be regarded as achieved when the facility meets the spirit of the standard. Another suggested that ''full compliance'' be regarded as achieved when an agency adopts adequate policies and procedures, and has demonstrated its intention to comply with those policies.

Finally, a number of comments suggested that the standards be ''fully'' complied with, and two suggested that ''full compliance'' mean complete compliance with the critical elements of the standard.

The final rule defines ''full compliance'' as ''compliance with all material requirements of each standard except for *de minimis* violations, or discrete and temporary violations during otherwise sustained periods of compliance.'' The Department concludes that a requirement for specific outcome measures would be impractical to implement across a broad spectrum of facility types, and further notes that compliance with procedural mandates is usually more within the control of a facility than achieving specific outcome measures. Furthermore, a definition that allows for some standards to be non-mandatory, or that defines full compliance as a percentage or by reference to substantial compliance, is not compatible with the plain meaning of the statutory term ''full compliance.'' Accordingly, the Department lacks the discretion to adopt such a definition.

Below is a nonexhaustive set of examples of violations that would be consistent with full compliance:

- A temporary vacancy in the PREA coordinator's position that the agency is actively seeking to fill;
- A small number of instances in which an agency fails by a number of days to meet a 14-day deadline imposed by the rule;

• Occasional noncompliance with staffing ratios in juvenile facilities due to disturbances in other housing units or staff illnesses;

• A short-term telephone malfunction that prevents inmate access to a confidential reporting hotline, which the agency acts promptly to restore once the malfunction is brought to its attention.

Generally speaking, the intent of this definition is to make clear that a Governor may certify ''full compliance'' even if, in circumstances that are not reasonably foreseeable, certain of the State's facilities are at times unable to comply with the letter of certain standards for some short period of time, but then act promptly to remedy the violation. This definition is in keeping with Congress's view that States would be able—and should be encouraged—to achieve full compliance.

The final rule also provides, in § 115.501(b), that the Governor's certification applies to all facilities in the State under the operational control of the State's executive branch, including facilities operated by private entities on behalf of the State's executive branch. The certification, by its terms, does not encompass facilities under the operational control of counties, cities, or other municipalities.

Gender nonconforming. The final rule adds a definition of this term, which is used in several standards. The term is defined to mean ''a person whose appearance or manner does not conform to traditional societal gender expectations.''

Intersex. Various commenters, including both correctional agencies and advocates, requested a definition of this term, and several advocates suggested definitions. The final rule defines the term as ''a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female.'' The definition also notes that ''[i]ntersex medical conditions are sometimes referred to as disorders of sex development.''

Juvenile. Several commenters criticized the proposed rule's definition of juvenile as any person under the age of 18 unless otherwise defined by State law. One commenter noted that State law may be inconsistent, defining a person as a juvenile for some purposes and as an adult for others. For clarity, the final rule revises the definition by changing ''unless otherwise defined by State law'' to ''unless under adult court supervision and confined or detained in a prison or jail.'' For reasons explained at greater length below, the Department has rejected the suggestion by some commenters to define juvenile as any person under the age of 18.

Some commenters recommended that the definition of juvenile include persons over the age of 18 who are currently in the custody of the juvenile justice system, because some State juvenile justice systems hold persons beyond that age who were originally adjudicated as juvenile delinquents. The final rule does not make that change. The set of standards for juvenile facilities refers throughout to ''residents.'' A ''resident'' is defined as ''any person confined or detained in a juvenile facility.'' Thus, the standards already cover over-18 persons confined in a facility that is primarily used for the confinement of under-18 persons, and the commenters' proposed change is not needed. In the rare instance that an over-18 person in the custody of the juvenile justice system is confined in an adult facility, it is appropriate for that person to be treated the same as others of similar age.

Juvenile facility. For clarifying purposes, the final rule adds language to make clear that a juvenile facility is one that is primarily used to confine juveniles ''pursuant to the juvenile justice system or criminal justice system.'' A facility that confines juveniles pursuant to a social services system, or for medical purposes, is beyond the scope of these regulations, regardless of whether it is administered or licensed by a Federal, State, or local government or a private organization on behalf of such government.

One commenter suggested amending the definition of juvenile facility to clarify that it includes all youth confined in juvenile facilities, not just those who are accused of, or have been adjudicated for committing, a delinquent act or criminal offense. The commenter noted that, as a result of shortages in residential mental health facilities, juvenile facilities may temporarily hold youth who are not accused of delinquent or criminal acts, while waiting for bed space to open up in residential mental health facilities. The Department has not made this change, because such youth are already covered to the extent that they are housed in a facility that primarily confines juveniles pursuant to the juvenile justice system or criminal justice system.

A State juvenile agency requested that the standards exempt community-based facilities that are not ''physically restricting'' and that serve juvenile delinquents as well as non-delinquent youth. The Department has not made this change. As stated above, the definition of juvenile facility includes any facility ''primarily used for the confinement of juveniles pursuant to the juvenile justice system or criminal justice system.'' If a non-secure residential facility fits this definition, it will fall within the scope of the standards, even if it also holds some non-delinquent youth. Youth who are legally obligated to return to a facility in the evening are at risk of sexual abuse and therefore warrant protection under these standards. Furthermore, where a facility is primarily used to confine juvenile delinquents, it would be illogical to exempt from coverage those facilities that happen to confine some non-delinquent youth as well.

Transgender. As with ''intersex,'' both agency and advocacy commenters requested that the final rule define this term. The definition adopted in the final rule—''a person whose gender identity (*i.e.,* internal sense of feeling male or female) is different from the person's assigned sex at birth''—reflects the suggestions of numerous advocacy commenters.

Other terms. The Department has not adopted the suggestion of one commenter to define a variety of additional terms including jail booking, intake, initial screening, and risk assessment. These terms are in common usage in correctional settings and have meanings that are generally understood, even if facility practices may vary in certain respects. To define these terms would risk confusion by imposing a one-size-fits-all definition on facilities that employ these terms in slightly different ways.

Definitions Related to Sexual Abuse (§ 115.6)

The final rule makes various changes to terms related to sexual abuse that were defined in the proposed rule.

Sexual abuse. Various commenters criticized the proposed definition for referencing the intent of the abuser. These commenters expressed the view that including an intent element would, in the words of one, ''require agencies to engage in a complicated time- and labor-intensive inquiry into the intent of the perpetrator.'' The final rule revises the definition to limit the relevance of intent.

With regard to sexual abuse by an inmate, the proposed rule had excluded ''incidents in which the intent of the sexual contact is solely to harm or debilitate rather than to sexually exploit.'' The purpose of that language was to exclude physical altercations that incidentally resulted in injuries to an inmate's genitalia. While correctional agencies should, of course, endeavor to protect inmates from physical harm of

all sorts, such incidental injury is beyond the scope of PREA. To eliminate the intent element while still preserving this exclusion, the final rule replaces the language quoted above with ''contact incidental to a physical altercation.''

With regard to abuse by staff, the proposed rule included contact between the penis and the vulva or anus; contact between the mouth and the penis, vulva, or anus; penetration of the anal or genital opening; and ''[a]ny other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of any person with the intent to abuse, arouse, or gratify sexual desire.'' The final rule replaces the intent clause with the following language: ''that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse or gratify sexual desire.'' Thus, if the touching is unrelated to official duties, no finding as to intent is necessary. If the touching *is* related to official duties—such as a strip search—the touching qualifies as sexual abuse only if it is performed in a manner that evidences an intent to abuse, arouse, or gratify sexual desire.

One agency recommended replacing ''sexual abuse'' with ''rape.'' The Department has not made this change. PREA defines ''rape'' broadly, in a manner that is more consistent with the customary definition of sexual abuse. For example, PREA includes ''sexual fondling'' in its definition of rape, *see* 42 U.S.C. 15609(9), (11), even though that term is typically associated with sexual abuse rather than with rape. The Department concludes that sexual abuse is a more accurate term to describe the behaviors that Congress aimed to eliminate.

An advocate for disability rights recommended that the Department define what it means for an inmate to be ''unable to consent,'' due to variations in State law on this issue. The Department has not done so, concluding that correctional agencies should use their judgment, taking into account any applicable State law.

One advocacy organization recommended that kissing be added to the definition of sexual abuse or sexual harassment, due to the possibility that kissing could be used as a ''grooming'' technique leading to other sexual activities. The Department concludes that it is appropriate to consider kissing to constitute sexual abuse in certain contexts where committed by a staff member. Accordingly, the final rule adds to the definition of sexual abuse by a staff member ''[c]ontact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire.''

Finally, the Department has made various nonsubstantive changes to the definition of sexual abuse, including simplifying its structure. In addition, the final rule provides that sexual abuse is not limited to incidents where the staff member touches the inmate's genitalia, breasts, anus, groin, inner thigh, or buttocks, but also includes incidents where the staff member induces the inmate to touch the staff member in such a manner.

Sexual harassment. Several correctional agencies recommended that the final rule remove sexual harassment from the scope of the standards. The Department has not done so. Although PREA does not reference sexual harassment, it authorized the NPREC to propose, and by extension authorized the Attorney General to adopt, standards relating to ''such other matters as may reasonably be related to the detection, prevention, reduction, and punishment of prison rape.'' 42 U.S.C. 15606(e)(2)(M). Certain standards reference sexual harassment in order to combat what may be a precursor to sexual abuse.

One commenter took issue with the categorization of ''repeated verbal comments or gestures of a sexual nature * * * including demeaning references to gender, sexually suggestive or derogatory comments'' as sexual harassment rather than sexual abuse. The commenter suggested that this categorization inappropriately downplayed the harm associated with such conduct, especially because many of the standards in the proposed rule referenced only sexual abuse and not sexual harassment. The Department has not made this change, largely because such activities fit the textbook definition of sexual harassment. To label comments and gestures as sexual harassment is not meant to belittle the harm that may ensue. (The question of whether specific standards should include sexual harassment as well as sexual abuse is a separate issue and is discussed below in reference to specific standards.) However, similar activity, when performed by a staff member, *does* constitute sexual abuse. This distinction recognizes that staff exert tremendous authority over every aspect of inmates' lives—far more authority than employers exert over employees in a workplace context. An attempt, threat, or request to engage in sexual contact, even if it does not result in actual sexual contact, may lead to grave consequences for an inmate, and deserves to be treated seriously. Indeed, in many States, such contact is considered to be a crime.[4]

The same commenter also recommended defining sexual harassment to include all comments of a sexual nature, not just repeated comments. One correctional agency made the same recommendation with regard to comments made by staff. The Department has not made this change. Various standards require remedial action in response to sexual harassment; while correctional agencies may take appropriate action in response to a single comment, a concern for efficient resource allocation suggests that it is best to mandate such action only where comments of a sexual nature are repeated.

Voyeurism. Some correctional agencies recommended removing voyeurism from the scope of the standards, fearing that its inclusion would result in groundless accusations against staff members merely for performing their jobs. This change has not been made. The Department notes that voyeurism is limited to actions taken ''for reasons unrelated to official duties''—which constitutes a significant limitation. A staff member who happens to witness an inmate in a state of undress while conducting rounds has not engaged in voyeurism. The risk of false accusations is an inevitable consequence of imposing limits upon staff members' actions, and is neither limited to, nor unusually problematic in, the context of voyeurism.

One correctional agency recommended that voyeurism be considered as a subset of sexual harassment and be limited to repeated actions, as with sexual harassment. The Department has not made this change. Voyeurism is appropriately considered to be a more serious offense than sexual harassment, and indeed is often a crime. The same commenter suggested that by placing voyeurism within the category of sexual abuse, ''there is no differentiation between incidences of voyeurism and rape.'' This is incorrect; sexual abuse appropriately encompasses a broad range of incidents of varying degrees of severity. The standards oblige correctional agencies to take certain actions in response to all incidents of sexual abuse, but the appropriate response will vary greatly depending upon the nature of the incident.

[4] *See* National Institute of Corrections/Washington College of Law Project on Addressing Prison Rape, *Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Individuals in Custody,* available at *http://www.wcl.american.edu/endsilence/documents/50StateSurveyofSSMLawsFINAL2009Update.pdf.*

Some advocacy commenters, and one sheriff's office, criticized the proposed rule for providing that taking images of all or part of an inmate's naked body, or of an inmate performing bodily functions, constituted voyeurism only if the staff member also distributed or published them. The final rule removes that limitation. Under the revised definition, taking such images constitutes voyeurism regardless of what the staff member does with the images afterwards.

Zero Tolerance; PREA Coordinator (§§ 115.11, 115.111, 115.211, 115.311)

Summary of Proposed Rule

The standard contained in the proposed rule required that agencies establish a zero-tolerance policy toward sexual abuse and harassment that outlines the agency's approach to preventing, detecting, and responding to such conduct. The Department also proposed that agencies employ or designate an upper-level, agency-wide PREA coordinator to oversee efforts to comply with the standards. The proposed standard specified that the agency-wide PREA coordinator would be a full-time position in all agencies that operate facilities whose total rated capacity—*i.e.,* an objective determination of available bed space in a facility—exceeds 1,000 inmates, but could be a part-time position in other agencies. The proposed standard also required that agencies whose total capacity exceeds 1,000 inmates must designate an existing full-time or part-time employee at each facility to serve as that facility's PREA coordinator.

Changes in Final Rule

The final standard no longer requires that the agency-wide PREA coordinator be a full-time position for large agencies. Instead, the standard provides that the PREA coordinator must have ''sufficient time and authority'' to perform the required responsibilities, which have not been changed from the proposed standard.

The final standard also requires that any agency that operates more than one facility (regardless of agency size) designate a PREA compliance manager at each facility with sufficient time and authority to coordinate the facility's efforts to comply with the PREA standards.

Comments and Responses

Comment. Numerous commenters criticized the proposed standard for requiring that the PREA coordinator be a full-time position. Such commenters indicated that establishing a full-time position would be cost-prohibitive and would inappropriately divert resources from other important efforts. Some recommended that agencies be given discretion in how to structure their PREA oversight and that coordinators be given flexibility to work on related tasks. One commenter suggested that the standard mandate that the PREA coordinator devote a specified minimum percentage of time to PREA-related work. Another commenter proposed that a full-time PREA coordinator be required only if a threshold level of verified sexual abuse incidents is reached.

Response. Designating a specific staff person to be accountable for PREA development, implementation, and oversight will help ensure the success of such efforts. However, agencies should have discretion in how to manage their PREA initiatives. Therefore, the final standard does not require that the PREA coordinator be a full-time position. Similarly, mandating a minimum percentage of staff time to be spent on PREA would be too stringent, and would not provide sufficient flexibility. Rather, the final standard requires that the agency designate a PREA coordinator with sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards.

As for the suggestion that a full-time coordinator be required only if verified incidents exceed a specified threshold, it is important to note that a low level of verified incidents does not necessarily mean that sexual abuse is not a concern. If an agency is not appropriately investigating allegations of sexual abuse, or if victims do not feel comfortable reporting such incidents, the level of verified incidents may not accurately reflect the agency's success at combating sexual abuse.

Comment. Various agency commenters requested additional flexibility with respect to the requirement that agencies with aggregate rated capacities of over 1,000 inmates designate facility-level PREA coordinators. Some commenters suggested raising or lowering the population threshold for this requirement.

Response. Where an agency operates multiple facilities, the final standard requires that all such facilities, regardless of size, designate a PREA compliance manager with sufficient time and authority to coordinate the facility's efforts to comply with the PREA standards. Having a ''point person'' at each facility will be beneficial regardless of the size of the agency or facility. (The PREA coordinator would serve as the ''point person'' at single-facility agencies.) The language in the final standard appropriately balances the need for accountability with the flexibility that sound correctional management requires.

Comment. One commenter inquired as to whether separate smaller facilities could share one PREA coordinator, to accommodate workload and cost concerns.

Response. With the additional flexibility provided in the final standard, such arrangements should not be necessary. Facilities are encouraged to collaborate on PREA efforts to the extent feasible, but ultimately each facility will need to ensure that effective practices and procedures are in place. For this reason, the final standard requires each facility in a multi-facility agency to have its own PREA compliance manager.

Comment. One commenter requested clarification as to the requirement that the PREA coordinator be an ''upper-level'' staff member.

Response. While it is not possible to define ''upper-level'' with precision, the PREA coordinator should have access to agency and facility leadership on a regular basis, and have the authority to work with other staff, managers, and supervisors to effectuate change if necessary. By contrast, the facility-specific PREA compliance manager need not be ''upper-level,'' but should have access to facility staff, managers, and supervisors in order to guide implementation.

Contracting With Other Entities for Confinement of Inmates (§§ 115.12, 115.112, 115.212, 115.312)

Summary of Proposed Rule

The standard contained in the proposed rule required that agencies that contract with outside entities include in any new contract or contract renewal the entity's obligation to comply with the PREA standards.

Changes in Final Rule

No substantive changes have been made to the proposed standard.

Comments and Responses

Comment. Numerous advocates urged that the standard be revised to require government agencies to impose financial sanctions on private contractors that fail to comply with the standards. These commenters also argued that contract entities should be held to the same auditing standards as agency-run facilities.

Response. As discussed below, the auditing standard (§ 115.401) requires

that every facility operated by an agency, or by a private organization on behalf of an agency, be audited for PREA compliance at least once in every three-year auditing cycle. The auditing requirements are the same, as are the effects of such audits: The Governor of each State is required to consider the audits of facilities within the operational control of the State's executive branch, including the audits of private facilities operated by a contract entity on behalf of such agencies, in determining whether to certify that the State is in full compliance with the PREA standards. However, the final standard does not require agencies to impose financial sanctions on non-compliant private contractors. The standard requires that new contracts or contract renewals include a provision that obligates the entity to adopt and comply with the PREA standards. Beyond that, the Department sees no need to specify the manner in which an agency enforces such compliance.

Supervision and Monitoring (§§ 115.13, 115.113, 115.213, 115.313)

Summary of Proposed Rule

The standard in the proposed rule contained four requirements. First, it required the agency to make an assessment of adequate staffing levels, taking into account its use, if any, of video monitoring or other technology, and the physical layout and inmate population of the facility. Second, it required agencies to devise a plan for how to best protect inmates from sexual abuse should staffing levels fall below an adequate level. Third, it required agencies to reassess at least annually the identified adequate staffing levels, as well as the staffing levels that actually prevailed during the previous year, and the facility's use of video monitoring systems and other technologies. Fourth, it required prisons, juvenile facilities, and jails whose rated capacity exceeds 500 inmates to implement a policy of unannounced rounds by supervisors to identify and deter staff sexual abuse and sexual harassment.

Changes in Final Rule

The final standard requires each prison, jail, and juvenile facility to develop and document a staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect inmates against sexual abuse. In calculating adequate staffing levels and determining the need for video monitoring, facilities must consider several factors, including: (1) Generally accepted detention and correctional practices; (2) any judicial findings of inadequacy; (3) any findings of inadequacy from Federal investigative agencies; (4) any findings of inadequacy from internal or external oversight bodies; (5) all components of the facility's physical plant (including ''blind spots'' or areas where staff or inmates may be isolated); (6) the composition of the inmate population; (7) the number and placement of supervisory staff; (8) institution programs occurring on a particular shift; (9) any applicable State or local laws, regulations, or standards; (10) the prevalence of substantiated and unsubstantiated incidents of sexual abuse; and (11) any other relevant factors. Prisons and jails must use ''best efforts to comply with the staffing plan on a regular basis'' and are required to document and justify deviations from the staffing plan.

Like the proposed standard, the final standard requires all agencies to annually assess, determine, and document for each facility whether adjustments are needed to (1) The staffing levels established pursuant to this standard; (2) prevailing staffing patterns; and (3) the facility's deployment of video monitoring systems and other monitoring technologies. The final standard also adds a requirement that the annual assessment examine the resources the facility has available to commit to ensure adequate staffing levels.

The final standard requires, lockups and community confinement facilities to develop and document a staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect inmates against sexual abuse. In circumstances where the staffing plan is not complied with, lockups and community confinement facilities must document and justify all deviations from the plan. The final standard, like the proposed standard, requires lockup and community confinement agencies to consider the facility's physical layout, the composition of its population, the prevalence of substantiated and unsubstantiated incidents of sexual abuse, and any other relevant factors. If vulnerable detainees are identified pursuant to the lockup screening process set forth in § 115.141, security staff must provide such detainees with heightened protection, including continuous direct sight and sound supervision, single-cell housing, or placement in a cell that is actively monitored, unless no such option is determined to be feasible.

The final standard sets specific minimum staffing levels for certain juvenile facilities. *As set forth below at the end of the discussion of the Supervision and Monitoring standard, the Department seeks additional comment on this aspect of the standard.* Specifically, the final standard requires secure juvenile facilities to maintain minimum security staff ratios of 1:8 during resident waking hours, and 1:16 during resident sleeping hours, except during limited and discrete exigent circumstances, and to fully document deviations from the minimum ratios during such circumstances. However, any secure juvenile facility that, as of the date of publication of the final rule, is not already obligated by law, regulation, or judicial consent decree to maintain the required staffing ratios shall have until October 1, 2017, to achieve compliance. A secure facility is one that typically does not allow its residents to leave the facility without supervision.[5] Group homes and other facilities that allow residents access to the community to achieve treatment or correctional objectives, such as through educational or employment programs, typically will not be considered to be secure facilities. For juvenile facilities, the final standard omits the requirement to plan for staffing levels that do not meet the identified adequate levels.

The final standard also extends to all jails (rather than, as in the proposed standards, only those jails whose rated capacity exceeds 500 inmates) the requirement of unannounced supervisory rounds to identify and deter staff sexual abuse and sexual harassment. In order to address concerns that some staff members might prevent such rounds from being ''unannounced'' by providing surreptitious warnings, the final standard adds a requirement that agencies have a policy to prohibit staff members from alerting their colleagues that such supervisory rounds are occurring, unless such announcement is related to the legitimate operational functions of the facility.

Comments and Responses

The NPRM posed several questions regarding staffing. Below is a summary of all comments received regarding this standard, keyed to the question to which they correspond, and the Department's responses.

[5] The full definition is as follows: ''*Secure juvenile facility* means a juvenile facility in which the movements and activities of individual residents may be restricted or subject to control through the use of physical barriers or intensive staff supervision. A facility that allows residents access to the community to achieve treatment or correctional objectives, such as through educational or employment programs, typically will not be considered to be a secure juvenile facility.'' § 115.5.

NPRM Question 4: Should the standard require that facilities actually provide a certain level of staffing, whether determined qualitatively, such as by reference to ''adequacy,'' or quantitatively, by setting forth more concrete requirements? If so, how?

Comment. Commenters were nearly unanimous in opposing a quantitative staffing requirement for adult facilities. Numerous adult correctional agencies expressed a strong preference for deference to agency decisions on staffing issues, given the varied and intricate factors that affect staffing levels, such as facility type, layout, population, classification levels, and whether and how the facility uses video surveillance. Many agency commenters expressed support for the proposed standard as written; some noted that many facilities already employ mandatory and minimum post/staffing criteria, which they can tailor to meet specific needs, such as by increasing staffing levels in particular units that have experienced an increase in victimization. Other commenters noted that some facilities are already bound by State-mandated staffing ratios, and that additional or different PREA ratios could conflict with State law. Jail administrators suggested the absence of any national model or best practice that supports a specific staffing ratio in local jails, due to extreme differences in facility size, age, architectural design, and population. Agency commenters emphasized that facility leadership is best positioned to determine ''adequate'' staffing levels. In general, advocacy groups agreed that, due to these concerns, the final standard should not mandate staffing ratios in adult facilities.

In addition to feasibility, many correctional commenters stated that the costs of establishing a specific staffing requirement would be prohibitive. These commenters noted that the ability to increase staffing levels at a facility is often beyond the control of either the facility or the agency. Staffing increases require additional funding, which usually must be legislatively appropriated. The commenters also noted that budget increases are unlikely in the current fiscal climate and would require a significant amount of lead time for approval. Several correctional stakeholders, joined by some advocacy groups, commented that specific staffing ratios in adult facilities would constitute an ''unfunded mandate,'' which might compel some agencies to choose not to attempt compliance with the PREA standards in general. In addition, commenters observed that increased costs imposed by a staffing mandate could result in elimination of programming for inmates due to funding limitations.

On the other hand, one local correctional agency commented that, given current fiscal conditions, some agencies will have difficulties expanding staffing unless the final standard mandates minimum staffing levels. In addition, some advocates noted that courts have held that cost is not an excuse for failing to provide for the safety of persons in custody, and argued that if an agency cannot provide adequate staffing to ensure inmate safety, then it should reduce its inmate population.

Response. The Department recognizes the many factors that affect adequate staffing and therefore does not promulgate a standard with concrete staffing requirements for adult facilities. The final standard enumerates a broader set of factors to be taken into consideration in calculating adequate staffing levels and determining the need for video monitoring: Generally accepted detention and correctional practices; any judicial findings of inadequacy; any findings of inadequacy from Federal investigative agencies; any findings of inadequacy from internal or external oversight bodies; all components of the facility's physical plant (including ''blind-spots'' or areas where staff or inmates may be isolated); the composition of the inmate population (such as gender, age, security level, and length of time inmates reside in the facility); the number and placement of supervisory staff; institution programs occurring on a particular shift; any applicable State or local laws, regulations, or standards; and the prevalence of substantiated and unsubstantiated incidents of sexual abuse. In addition, the final standard requires facilities to take into account ''any other relevant factors.''

Given the intricacies involved in formulating an adequate staffing plan, the Department does not include specific staffing ratios for adult facilities in the final standard. The final determination as to adequate staffing levels remains in the discretion of the facility or agency administration. In addition, the facility is encouraged to reassess its staffing plan as often as necessary to account for changes in the facility's demographics or needs.

With regard to the cost of staffing, the Department notes that the Constitution requires that correctional facilities provide inmates with reasonable safety and security from violence, *see Farmer* v. *Brennan,* 511 U.S. 825, 832 (1994), and sufficient staff supervision is essential to that requirement. However, the Department is sensitive to current fiscal conditions and the inability of correctional agencies to secure budget increases unilaterally. The Department is also cognizant of the fact that staffing is the largest expense for correctional agencies, and recognizes that the costs involved in increasing staffing could make compliance difficult for some facilities. While adequate staffing is essential to a safe facility, the Department wishes to avoid the unintended consequence of decreased programming and other opportunities for inmates as a result of budgetary limitations.

The final standard also requires the agency to reassess, determine, and document, at least annually, whether adjustments are needed to resources the facility has available to commit to ensure adherence to the staffing plan. This language accounts for the fact that resource availability will affect staffing levels and provides agencies an incentive to request additional staffing funds as needed. The Department considered including a requirement for the agency to request additional funds from the appropriate governing authority, if necessary, but determined that this decision best remained within the discretion of the agency.

The final standard requires agencies to use ''best efforts to comply on a regular basis'' with the staffing plan. Facilities must document and justify deviations from the staffing plan, but full compliance with the plan is not required to achieve compliance with the standard. The Department considered including in the standard a specific mandate to comply with the staffing plan, but determined that requiring ''best efforts'' is more appropriate, to avoid penalizing agencies that unsuccessfully seek to obtain additional funds. Lockups and community confinement facilities are exempt from the ''best efforts'' language, but must document deviations from the staffing plan. Juvenile facilities, however, must comply with their staffing plans except during limited and discrete exigent circumstances, and must fully document deviations from a plan during such circumstances.

The Department reiterates, however, that this standard, like all the standards, is not intended to serve as a constitutional safe harbor. A facility that makes its best efforts to comply with the staffing plan is not necessarily in compliance with constitutional requirements, even if the staffing shortfall is due to budgetary factors beyond its control.

Comment. Numerous advocates expressed concern that the proposed

standard did not require the facilities to adhere to a specific staffing plan. These commenters noted that the proposed standard required agencies to develop a staffing plan but did not require that agencies safely staff the facilities. In addition, because the proposed standard required agencies to plan for what to do if they failed to comply with their staffing goals, commenters suggested that it could be read to permit or condone unsafe supervision levels. These advocates proposed requiring agencies to comply with their initial staffing goals and eliminating the requirement that agencies plan for suboptimal staffing. Former members of the NPREC, and an advocacy organization, recommended that the Department revise its proposed supervision standard to require agencies to annually review staffing and video monitoring to assess their effectiveness at keeping inmates safe in light of reported incidents of sexual abuse, identify the changes it considers necessary, and actually implement those changes.

Response. The Department recognizes the tension in the proposed standard between requiring an agency to identify adequate staffing levels, but then implicitly allowing the facility to operate without requisite staffing in accordance with a ''backup plan.'' Therefore, the final standard requires each prison, jail, and juvenile facility to develop, implement, and document a staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect inmates against sexual abuse, taking into account the relevant factors affecting staffing needs. In addition, the final standard requires that, at least annually, the agency must assess, determine, and document whether adjustments are needed to the staffing plan, but does not require implementation of such adjustments. Because the Department recognizes that staffing levels are often dependent on budget approval from an external legislative or other governmental entity, the final standard requires each adult prison and jail to use its ''best efforts to comply on a regular basis'' with its staffing plan. Given the costs involved and the lack of control correctional agencies may have with regard to budgetary issues, the final standard is designed to encourage adequate staffing without discouraging agencies from attempting to comply with the PREA standards due to financial concerns.

Comment. Advocates expressed concern that the proposed standards failed to provide sufficient guidance with respect to how staffing levels should be established. One advocate suggested that, in determining safe staffing ratios, facilities should start with any State requirements and standards promulgated by the American Correctional Association and the American Jail Association. Several comments suggested including as factors any blind spots within the facility, including spaces not designated for residents, such as closets, rooms, and hallways; high traffic areas within the facility; the ease with which individual staff members can be alone with individual residents in a given location; the potential value of establishing and retaining video and other evidence of sexual misconduct; the need to provide enhanced supervision of inmates who have abused or victimized other inmates; the need to ensure that vulnerable inmates receive additional protections without being subjected to extended isolation or deprived of programming; previous serious incidents and the staffing and other circumstances that existed during those incidents; the need for increased or improved staff training; the number of special needs or vulnerable inmates; the number and placement of supervisory staff; grievances from inmates, staff, visitors, family members, or others; compliance with any applicable laws and regulations related to staffing requirements; individual medical and mental health needs; availability of technology; custody level; management level; capacity; and peripheral duty requirements.

Response. The Department considered each suggestion and adopted a final standard that requires facilities to consider the following factors: (1) Generally accepted detention and correctional practices; (2) any judicial findings of inadequacy; (3) any findings of inadequacy from Federal investigative agencies; (4) any findings of inadequacy from internal or external oversight bodies; (5) all components of the facility's physical plant (including ''blind-spots'' or areas where staff or inmates may be isolated); (6) the composition of the inmate population; (7) the number and placement of supervisory staff; (8) institution programs occurring on a particular shift; (9) any applicable State or local laws, regulations, or standards; (10) the prevalence of substantiated and unsubstantiated incidents of sexual abuse; and (11) any other relevant factors. The factors enumerated in the final standard are broadly applicable across different types of facilities, allow for comprehensive analysis without prescribing every single detail to be considered, and provide sufficient guidance as to how to plan for staffing levels that will provide adequate supervision to protect inmates from sexual abuse. The listed factors are not exclusive; facilities should consider additional issues that are common across correctional facilities and pertinent to the characteristics of each specific facility, and findings from reports and empirical studies relevant to sexual abuse issued by the Department, academia, or professional sources. As an example of one finding from a Department report that would be relevant to determining adequate staffing, as well as the need for increased video monitoring or the frequency of rounds, the Department encourages facilities to consider that inmate-on-inmate sexual abuse is most likely to occur in the evening, when inmates are awake but often confined to their cells and staffing levels are generally lower than during the day.[6] In addition, the National Resource Center for the Elimination of Prison Rape will develop guidance to help facilities compose an adequate staffing plan, and the Department's National Institute of Corrections is available to provide technical assistance on developing an adequate staffing plan.

Comment. One correctional agency interpreted the proposed standard to require direct supervision of inmates, which it asserted would have major cost implications.

Response. This comment is based on a misinterpretation of the proposed standard, which did not require direct supervision. Nor does the final standard.

Comment. Some correctional agency commenters argued that it is not appropriate for the Federal government, or for State governments, to set staffing standards for a facility run by an independently elected constitutional officer at the local level.

Response. The Department is sensitive to concerns regarding interference with local government. However, Congress mandated in PREA that the Attorney General adopt standards that would apply to local facilities as well as Federal and State facilities, as evidenced by the statute's definition of ''prison'' as ''any confinement facility of a Federal, State, or local government, whether administered by such government or by a private organization on behalf of such

[6] *See* Allen J. Beck and Paige M. Harrison, Bureau of Justice Statistics (''BJS''), *Sexual Victimization in Prisons and Jails Reported by Inmates, 2008–09,* at 22 (Table 16) (Aug. 2010).

government.'' 42 U.S.C. 15609.[7] The application of the staffing standard to local correctional agencies is consistent with Congress's mandate to the Department. Indeed, it is not uncommon for State staffing standards, especially for juvenile facilities, to apply to facilities that are under the purview of an independently elected county or municipal official. For these reasons, the Department does not view the imposition of this standard as inappropriately intruding upon the prerogatives of local elected officials.

Comment. One correctional agency commented that hiring more staff does not necessarily eliminate sexual abuse.

Response. The Department recognizes that adequate staffing levels alone are not sufficient to combat sexual abuse in a corrections setting. However, adequate staffing is essential to providing sufficient supervision to protect inmates from abuse.

NPRM Question 5: If a level such as ''adequacy'' were mandated, how would compliance be measured?

NPRM Question 11: If the Department does not mandate the provision of a certain level of staffing, are there other ways to supplement or replace the Department's proposed standard in order to foster appropriate staffing?

NPRM Question 14: Are there other ways not mentioned above in which the Department can improve the proposed standard?

Comment. The Department received numerous suggestions from agency commenters on proposed methods for measuring adequacy. Some stakeholders expressed concern that a subjective ''adequacy'' standard would be difficult to audit. Many commenters requested a better definition of ''adequacy.'' Various advocacy and correctional groups commented that agencies would benefit from a more detailed description of what they must consider when conducting the staffing and technology analyses that PREA requires. Others suggested that ''adequate,'' while subjective, is the most appropriate term to use in this context.

Response. The final standard does not include a specific definition for ''adequate staffing'' but does provide greater guidance as to the factors that should be considered in developing an adequate staffing plan. The Department intends to develop, in conjunction with the National Resource Center for the Elimination of Prison Rape, auditing tools that will guide PREA auditors regarding the various factors affecting the adequacy of staffing. The final standard contains additional documentation requirements, which will aid the auditor in reviewing the adequacy of the plan and the facility's efforts at complying with it. The auditor will review documentation showing that the agency or facility conducted a proper staffing analysis taking into account all enumerated and relevant factors included in the standard. In addition, the National Resource Center for the Elimination of Prison Rape will develop guidance to help facilities compose an adequate staffing plan. And, as noted above, the Department's National Institute of Corrections can provide technical assistance on developing an adequate staffing plan.

Comment. Some correctional commenters, including the American Jail Association, requested best-practice tools for achieving ''adequate'' staffing. They suggested that the Federal government develop appropriate tools, model policies, and training materials that address the basic principles of PREA and focus on adequate supervision in order to provide facilities with ''a greater chance of meaningful implementation of this standard.''

Response. As discussed above, the National Resource Center for the Elimination of Prison Rape will develop guidance both for facilities in composing an adequate staffing plan and for auditors in evaluating adequacy of staffing during a PREA audit. These materials will be available to aid agencies in achieving compliance with the final standard.

Comment. Some correctional agencies and advocacy groups recommended assessing the adequacy of staffing by reviewing any incidents related to sexual or physical abuse at a facility to determine if inadequate staffing played a role. One juvenile justice agency suggested that daily monitoring of PREA-related incidents could help identify staffing needs. Another agency commenter suggested reviewing incident reports of rule violations at particular posts.

Response. Reviewing incidents of abuse and rule violations can provide information as to whether staffing is adequate in a particular facility or unit of a facility. However, incidents of abuse should not be the only factor. As discussed above, many factors affect adequacy of staffing. In addition, the reliability of the record of prior incidents may depend upon the facility's diligence at investigating allegations and its ability to create a culture in which inmate victims feel comfortable reporting incidents without fear of reprisal. Accordingly, it is not possible to define adequacy solely in these terms. Of course, if a review of incident reports indicates that insufficient staffing is a contributing factor in sexual abuse, such a finding is clearly relevant to the ultimate determination as to the adequacy of staffing.

Comment. One State correctional agency suggested that adequacy could be defined by determining the minimum staffing levels at which a facility is able to operate within constitutional requirements and determining whether a facility is adhering to such staffing levels.

Response. Adequate staffing is essential to providing constitutional conditions within a correctional facility. However, it is not feasible for the Department to determine, at every Federal, State, and local facility, the level of staffing required to comport with the Constitution, especially given that the level may change over time as the size and nature of the facility's population changes. The PREA audit with regard to this standard will focus on whether the facility has developed and utilized best efforts to comply on a regular basis with an adequate staffing plan to protect inmates from sexual abuse.

Comment. Some correctional commenters suggested that ''adequate'' staffing levels be measured by the facility's ability to perform required functions, such as feeding inmates, conducting routine checks, holding outdoor recreation, and generally maintaining the facility schedule without requiring significant periods of lockdown.

Response. A facility's inability to perform required functions and operate in accordance with the institutional schedule without significant periods of lockdown may have a direct bearing on the adequacy of staffing. However, deviations from the schedule and performance deficiencies may signal deeper problems unrelated to the number of staff. In addition, the ability to stay on schedule and perform routine functions does not necessarily indicate a safe or adequately staffed facility. While this information may be relevant to an auditor's review of the facility's staffing plan, it cannot be the sole determinant of staffing adequacy.

Comment. Many commenters, including correctional agencies and advocacy groups, suggested that adequacy be measured by assessing whether a facility complies with its written staffing plan. One agency

[7] In addition, the cost limitation language in the statute expressly references local institutions. See 42 U.S.C. 15607(a)(3) (''The Attorney General shall not establish a national standard under this section that would impose substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities.'').

suggested that compliance should be measured by determining whether the facility is complying with the plan rather than by reviewing the level or nature of incidents of abuse. Former NPREC members recommended that staffing level compliance be measured during the baseline audit, and that actual staffing patterns should be compared with the levels determined by the facility needs assessment. If the audit outcome reveals that current staffing levels are inadequate, facilities should be required to develop a corrective action plan, a timeline for implementation, and regularly scheduled assessments to monitor progress toward achieving safe staffing levels.

Response. The final standard requires agencies to develop, document, and use ''best efforts'' to comply on a regular basis with a staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect inmates against sexual abuse, taking into account the relevant, enumerated factors. A more stringent mandate would unfairly penalize agencies that do not have budgetary authority or funds to increase staffing. In addition, if faced with a specific mandate to comply with the staffing plan, agencies would have an incentive to formulate plans that undercount the number of staff needed in order to facilitate compliance with the plan. The final standard encourages agencies to compose the most appropriate staffing plan for each facility without concern that the agencies will be overly conservative in their staffing analysis in order to avoid non-compliance with the PREA standards. To be sure, if the facility's plan is plainly deficient on its face, the facility is not in compliance with this standard even if it adheres to the plan.

In addition, a failure to comply with identified adequate staffing levels may affect a facility's ability to comply with other standards. Pursuant to the auditing standards, facilities that receive a finding of ''Does Not Meet Standard'' with regard to any of the PREA standards will have a 180-day corrective action period in which the auditor and the agency shall jointly develop a corrective action plan to achieve compliance and the auditor will take necessary and appropriate steps to verify implementation of the corrective action plan before issuing a final determination as to whether the facility has achieved compliance.

Comment. Some correctional stakeholders suggested that the Department require each facility to conduct incident mapping and set performance goals, and then measure adequacy based on the facility's ability to meet these goals.

Response. The Department recognizes that incident mapping and performance goals are important quality improvement measures, and encourages all facilities to implement a system to set goals, collect and review data, identify trends, and chart progress towards performance goals. However, because incident reporting is an imperfect measurement of adequate staffing, the results of such a system cannot provide an ultimate assessment of compliance.

NPRM Question 6: Various States have regulations that require correctional agencies to set or abide by minimum staffing requirements. To what extent, if any, should the standard take into account such State regulations?

Comment. Agency commenters felt strongly that compliance with a State minimum staffing requirement should lead to a presumption that staffing is adequate. Some stakeholders commented that concrete staffing requirements should apply only if a facility is not already subject to staffing mandates set by an outside agency or commission. Various correctional commenters noted that some accreditation entities honor compliance with State staffing regulations, and suggested that the PREA standards do the same. On the other hand, some advocacy groups argued that State-mandated minimum staffing ratios may not be sufficient to establish adequacy and that many facilities are not in compliance with such ratios. One advocate recommended that the standards require compliance with any applicable State or Federal laws, unless the PREA standards offer increased protection.

Response. The final standard directs agencies to take into account any applicable State or local laws, regulations, or standards in formulating an adequate staffing plan for jails, prisons, and juvenile facilities. While regulations setting a minimum staffing level may be instructive, they do not necessarily equate to adequate staffing for each unit of each facility. Applicable State laws are a factor to consider, but in developing adequate staffing plans, an agency must take into account all relevant factors that bear on the question of adequacy.

Comment. Some correctional stakeholders commented that it would violate the Tenth Amendment if the PREA standards required compliance with a specific staffing standard other than that set by the State.

Response. The Department understands the concerns submitted by State agencies regarding the impact of PREA standards, and has welcomed the opportunity to consult with the Department's partners at the State level to develop effective standards that minimize costs, maximize flexibility, and, to the extent feasible, minimize conflict with State and local laws and regulations. However, the Department concludes that PREA is consistent with the Federal government's responsibilities to protect the constitutional and civil rights of all persons in custody. Moreover, PREA is an appropriate exercise of Congress's power to condition Federal funding upon grantees' compliance with relevant conditions. The application of the staffing standard to State and local correctional agencies is consistent with Congress's mandate to the Department. Indeed, Federal regulations frequently impose requirements that exceed requirements imposed by specific States. Accordingly, the Department does not view the imposition of this standard as inappropriately intruding on State prerogatives.

NPRM Question 7: Some States mandate specific staff-to-resident ratios for certain types of juvenile facilities. Should the standard mandate specific ratios for juvenile facilities?

Comment. Many advocacy groups commented that specific staffing ratios are appropriate and commonly utilized for juvenile facilities, and specifically proposed establishing a minimum 1:6 ratio for supervision during hours when residents are awake and a 1:12 ratio during sleeping hours. These commenters stated that minimum juvenile staffing ratios fall within the guidelines established by various States and correctional organizations, and that two jurisdictions already require the 1:6 and 1:12 staffing ratios. In contrast to adult correctional agencies, juvenile agencies were less opposed to mandatory staffing ratios for juvenile facilities. However, some juvenile justice administrators expressed the same concerns raised with regard to adult facilities—that specific ratios would constitute a cost-prohibitive, unfunded mandate and that it would be impractical to establish one ratio to fit all facilities. Multiple agency commenters noted that they were already subject to mandatory staffing ratios and that any such ratios in the PREA standards would be duplicative or conflicting.

Response. The Department adopts a standard requiring a minimum staffing ratio in secure juvenile facilities of 1:8 for supervision during resident waking

hours and 1:16 during resident sleeping hours. Unlike for adult facilities, it is relatively common for juvenile facilities to be subject to specific staffing ratios by State law or regulation. The Department's research indicates that over 30 States already impose staffing ratios on some or all of their juvenile facilities.

The standard's ratios include only security staff. Of the States identified as requiring specific staffing ratios, approximately half count only ''direct-care staff'' in these ratios.[8] (For most of the remaining States requiring specific staffing ratios, the Department has not been able to determine precisely which categories of staff are included.) In addition, the National Juvenile Detention Association's position statement, ''Minimum Direct Care Staff Ratio in Juvenile Detention Centers,'' which recommends respective day and night minimum ratios of 1:8 and 1:16, specifically limits the included staff to direct-care staff.[9]

The 1:8 and 1:16 staffing ratios adopted by the final standard match or are less stringent than the ratios currently mandated by twelve States, plus the District of Columbia and Puerto Rico, for their juvenile detention facilities, juvenile correctional facilities, or both. The Department's Civil Rights Division has consistently taken the position that sufficient staffing is integral to keeping youth safe from harm and views minimum staffing ratios of 1:8 during the day and 1:16 at night as generally accepted professional standards in secure juvenile facilities. For this reason, the Civil Rights Division has entered into multiple settlement agreements that require jurisdictions to meet minimum staffing ratios in order to ensure constitutional conditions of confinement for juveniles. In addition, as noted above, the National Juvenile Detention Association's 1999 position statement on ''Minimum Direct Care Staff Ratio in Juvenile Detention Centers'' supports a minimum ratio of 1:8 during the day and 1:16 at night.

Given the widespread practice of setting minimum staffing ratios for juvenile facilities, the Department believes these ratios accord with national practice, are an integral measure for protecting juveniles from sexual assault, and can be implemented without excessive additional costs. In order to provide agencies with sufficient time to readjust staffing levels and, if necessary, request additional funding, any facility that, as of the date of publication of the final rule, is not already obligated by law, regulation, or judicial consent decree to maintain the required staffing ratios shall have until October 1, 2017, to achieve compliance.

The standard excludes non-secure juvenile facilities from this requirement. Juveniles in non-secure facilities typically have less acute violent and abusive characteristics than those in secure facilities. Many jurisdictions utilize a risk screening instrument to determine whether a juvenile requires a secure placement; juveniles who are identified as having a high likelihood for assaultive behavior and re-offense are generally held in secure facilities. Accordingly, many non-secure and community-confinement-type facilities do not require as intensive staffing levels to protect residents from victimization.

Comment. Many correctional stakeholders suggested that, if a staffing ratio is set for juvenile facilities, the standards should differentiate between long-term juvenile correctional facilities and short-term juvenile detention facilities.

Response. The Department recognizes that long-term placement facilities have different types of staffing needs than short-term detention facilities. For example, short-term detention facilities serve less stable populations, residents without comprehensive housing classification information, and residents awaiting placement in other residential facilities—usually for shorter stays but sometimes for extended periods of time. These populations tend to be more unpredictable and more likely to engage in disruptive behavior requiring higher levels of staffing. On the other hand, long-term placement facilities often have significantly higher levels of programming requiring continuous movement throughout various areas of the facility. Such increased movement requires higher levels of security staffing to maintain security. Accordingly, the Department has determined that the same staff ratios are appropriate for both types of facilities, but for different reasons.

Some States currently mandate higher levels of staff supervision in their long-term residential facilities, while others require higher levels of staff supervision for their short-term detention facilities. A number of States currently require high levels of staff supervision for both facility types. Agencies are encouraged to exceed the ratios set forth in the standard where the unique characteristics of the facility and youth require more intensive supervision levels.

Comment. One juvenile correctional agency commented that stringent staffing levels will not ensure the safety of youth if staff do not remain vigilant and provide active supervision. This commenter posited that if a facility has high numbers of incidents, it is most likely due to facility culture rather than staff size.

Response. The Department recognizes that adequate staffing levels alone are not sufficient to combat sexual abuse and that developing a healthy facility culture is a key component in this effort. However, adequate staffing is essential to providing sufficient supervision to protect residents from abuse. In addition to the staffing requirements, the final rule contains comprehensive standards on a broad range of topics related to preventing abuse. While a healthy facility culture cannot be mandated directly, the adoption and implementation of the standards will assist greatly in developing such a culture, by requiring agencies and facilities to institutionalize a set of policies and practices that, among other things, will elevate the importance of agency and facility responsibilities to protect against sexual abuse.

Comment. Some juvenile agencies suggested that, if adequate staffing levels are mandated, there will be a need for guidelines for auditors so that sporadic deficiencies in staff levels may be excused, while long-term patterns of non-compliance are dealt with fairly.

Response. In the final rule, the Department adopts a definition of ''full compliance'' that requires ''compliance with all material requirements of each standard except for *de minimis* violations, or discrete and temporary violations during otherwise sustained periods of compliance.'' § 115.5. However, when conducting an audit of a particular facility, the PREA auditor will assess, with regard to each specific standard, whether the facility exceeds the standard, meets the standard, or requires corrective action. The Department intends to develop, in conjunction with the National Resource

[8] For juvenile facilities, the term ''direct-care staff'' is often used in a manner that approximates this rule's definition of ''security staff.'' While the precise definition varies across jurisdictions, it is generally meant to include staff whose exclusive or primary duties include the supervision of residents.

[9] *See* National Juvenile Detention Association, *Minimum Direct Care Staff Ratio in Juvenile Detention Centers,* at 6 (June 8, 1999), available at *http://npjs.org/docs/NJDA/NJDA_Position_Statements.pdf.* The NJDA position statement is generally more restrictive than the requirement in the PREA standard. Specifically, while the PREA standard defines ''security staff'' as ''employees *primarily* responsible for the supervision and control of * * * residents in housing units, recreational areas, dining areas, and other program areas of the facility,'' the NJDA position statement defines ''direct care staff'' as ''[e]mployees whose *exclusive* responsibility is the direct and continuous supervision of juveniles'' *Id.* (emphases added).

Center for the Elimination of Prison Rape, auditing tools that will guide PREA auditors through these assessments.

Comment. Some juvenile justice agencies commented that, in States that currently require a minimum staffing ratio for juvenile facilities, additional PREA staffing ratio requirements will result in agencies and facilities being audited on the same standards by two different auditing teams—one to determine compliance with the State requirements and one to determine compliance with the PREA standards. These commenters remarked that such double auditing would be an unnecessary duplication of effort and should not be required by the PREA standards.

Response. The staffing analysis conducted by a PREA auditor will be just one aspect of the PREA audit, which will examine a facility's compliance with all applicable standards. While this may result in some duplication of efforts, facilities may be able to schedule their triennial PREA audits so as to combine the PREA audit with other accreditation proceedings. In addition, while the PREA audit will encompass the facility's compliance with all of the PREA standards, it will be focused on issues related to sexual abuse and thus likely will be narrower in scope than other audits to which the facility is subjected.

Comment. Many advocacy groups recommended that the juvenile standard recognize the value of continuous, direct supervision in preventing sexual misconduct in juvenile facilities.

Response. The Department supports the use of continuous, direct supervision and notes that many juvenile facilities already employ direct supervision as a matter of course. However, some physical plants are not conducive to direct supervision. In those facilities, a mandate for direct supervision would require major renovations at a high cost. For this reason, the final standard does not require direct supervision. With regard to under-18 inmates held in adult facilities, § 115.14 requires such facilities to provide direct staff supervision if the under-18 inmates have contact with adult inmates.

NPRM Question 8: If a level of staffing were mandated, should the standard allow agencies a longer time frame, such as a specified number of years, in order to reach that level? If so, what time frame would be appropriate?

Comment. Correctional stakeholders, while remaining opposed to mandated staffing levels, supported an extended timeframe, if such requirements were included, in order to allow for the local governments to allocate additional staffing funding. Some suggested a two-year timeframe; others requested up to five years; and some suggested that extensions should be granted where necessary. One agency proposed tying the timeframe to the growth rate of the State's annual per capita gross domestic product. Although advocacy groups did not promote specific ratios for adult facilities, they did state that if specific staffing levels are required, there should be no extension of the timeframe because, in one commenter's words, ''adequate staffing to prevent risk of harm to incarcerated individuals is already required by the Constitution and reinforced through case law requiring protection from harm.''

Response. The Department adopts specific staffing ratios only with regard to secure juvenile facilities. Many of these facilities are already subject to the ratios required by the final standard and therefore will not need additional time to comply. However, in order to provide agencies with sufficient time to readjust staffing levels and, if necessary, request and obtain additional funding, any secure juvenile facility that, as of the date of publication of the final rule, is not already obligated by law, regulation, or judicial consent decree to maintain the required staffing ratios shall have until October 1, 2017, to achieve compliance. The Department recognizes that increasing staffing often requires additional legislative appropriations, as well as time needed to recruit and train appropriate new staff.

NPRM Question 9: Should the standard require the establishment of priority posts, and, if so, how should such a requirement be structured and assessed?

NPRM Question 10: To what extent can staffing deficiencies be addressed by redistributing existing staff assignments? Should the standard include additional language to encourage such redistribution?

Comment. In general, correctional stakeholders and advocacy groups agreed that it would be difficult to establish priority posts or regulate staff redistribution, given the vast differences in facility layout and inmate composition. Many comments stated that establishing priority posts and redistributing staff require detailed knowledge of the facility's needs in order to best determine how staff should be allocated. Other commenters suggested that the Department encourage but not mandate this practice. One State correctional agency recommended that the standard omit language regarding redistribution to avoid conflict with existing collective bargaining agreements and State laws governing such agreements.

Some advocates argued that staffing in medical units, work release programs, and other opportunities for seclusion should be considered priority posts. One advocacy group recommended that the staffing plan identify those posts that must be filled in every shift, regardless of unexpected absences or staff shortages.

Response. Given the variation in facilities and their operational needs, the Department concludes that priority posts and staff distribution are best left to the agency's discretion. By requiring agencies to reassess their staffing plans at least once per year, the final standard requires agencies to determine whether and to what extent priority posts should be established, or existing staff redistributed, to account for changed circumstances and facility needs.

Comment. The American Jail Association commented that few jails are sufficiently similar in layout, classification systems, and supervision methods to allow for any universal definition of priority posts. Therefore, the AJA and other correctional stakeholders requested that the Federal government provide a tool for local jails to use in determining risk, thereby helping jails to identify priority posts.

Response. The National Resource Center for the Elimination of Prison Rape will be available to provide technical assistance to agencies who seek resources and training. The Department encourages agencies to contact the Center with requests of this type.

Comment. Some correctional agencies suggested that staff redistribution should be connected to filed and substantiated complaints related to sexual abuse, but that the ultimate decision should be a management activity.

Response. The Department agrees that staff redistribution may be an appropriate response to a complaint of sexual abuse. The agency retains the discretion as to how to handle such staff redistribution.

NPRM Question 12: Should the Department mandate the use of technology to supplement sexual abuse prevention, detection, and response efforts?

NPRM Question 13: Should the Department craft the standard so that compliance is measured by ensuring that the facility has developed a plan for securing technology as funds become available?

Comment. Correctional stakeholders strongly opposed any mandate for increased technology, which they emphasized would be cost-prohibitive. Some advocates strongly encouraged mandates for cameras throughout the facilities, which they viewed as the best deterrent against abuse, especially by staff, and important to substantiating incidents of abuse. Other advocates cautioned that cameras in certain locations can intrude upon inmate privacy. Several advocacy groups emphasized that technology should supplement, not substitute for, adequate staff supervision. These advocates opposed a technology mandate when the funds could better be spent on additional or higher-quality staffing, believing that cameras are most productive as investigatory tools to confirm abuse, rather than as a means to prevent abuse. Most commenters were receptive to a standard encouraging increased use of technology to augment supervision.

Response. The final standard requires each facility to develop, implement, and document a staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect inmates against sexual abuse. Given the costs associated with video monitoring technology, the Department concludes that the issue is best left to the agency's discretion. The facility is in the best position not only to determine the need for such technology but also to determine how and where to place cameras.

The Department recognizes that technology is best utilized to supplement, but not replace, staff supervision. Camera surveillance is a powerful deterrent and a useful tool in post-incident investigations. But it cannot substitute for more direct forms of staff supervision (in part because blind spots are inevitable even in facilities with comprehensive video monitoring), and cannot replace the interactions between inmates or residents and staff that may prove valuable at identifying or preventing abuse. In addition, cameras generally do not translate into a reduction of staff levels—additional staff may be required to properly monitor the new cameras. Indeed, many cameras in correctional facilities are currently not continuously monitored.

While the Department encourages increased use of video monitoring technology to supplement sexual abuse prevention, detection, and response efforts, the agency is in the best position to determine if current or future funds are best directed at increasing the agency's use of technology.

Comment. Former members of the NPREC recommended that the Department reinstate two distinct standards for inmate supervision and use of monitoring technology. They expressed concern that the Department's decision to incorporate inmate supervision and monitoring technology into a single standard unintentionally emphasizes the use of technology to the detriment of the level of supervision that is essential to protect inmates from sexual abuse. They recommended that the Department encourage and facilitate, but not mandate, the use of technology to supplement sexual abuse prevention, detection, and response efforts.

Response. The final standard does not mandate the use of video monitoring technology but instructs agencies to take such technology into consideration, where applicable, in evaluating staffing needs. The Department did not intend for the combined standard to emphasize the use of technology over supervision, and based upon comments received, does not believe that it was received as such. The Department believes it is appropriate to consider the technology available to a facility, but does not consider video monitoring a substitute for staff supervision. The National Resource Center for the Elimination of Prison Rape can provide technical assistance for agencies seeking input on how to introduce or enhance monitoring technology in their facilities.

Comment. One advocacy group commented that the proposed standard should provide guidance on who should monitor cameras, especially in cross-gender circumstances.

Response. Section 115.15 requires that all facilities implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in the case of emergency (now reworded as ''exigent circumstances'') or when such viewing is incidental to routine cell checks. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering an inmate housing unit (for jails and prisons) or an area where detainees or residents are likely to be showering, performing bodily functions, or changing clothing. Accordingly, no staff should monitor a camera that is likely to view inmates of the opposite gender while they are showering, performing bodily functions, or changing clothing.

Comment. One advocacy group commented that the proposed standard should provide guidance on how long recordings should be retained.

Response. The Department encourages sufficient retention policies to support an appropriate investigations system. Because the final standard does not mandate the use of video, it is best to leave the specifics to agency discretion.

Comment. Some juvenile justice agencies suggested that any mandate regarding video monitoring technology should be tied directly to a facility's compliance with the PREA standards and its overall rate of substantiated sexual abuse incidents. A plan for securing additional technology funding should only be necessary, in their view, if a facility is found to have a higher than average rate of sexual abuse cases. Facilities would then draft a corrective active plan that may or may not include the need for additional technology. Mandated technology expenditures would occur only after a facility has demonstrated a continued failure to reduce a higher-than-average rate of sexual abuse incidents.

Response. While the Department encourages the use of video monitoring technology to deter sexual abuse and aid in the investigatory process, the final standard does not require any facility to install camera systems. However, an agency may determine that the addition of cameras is an appropriate response to incidents of sexual abuse at a particular facility or specific areas within a facility. The Department encourages all agencies to assess the potential value of such technology in combating sexual abuse. As discussed elsewhere, the Department does not believe that the overall rate of substantiated sexual abuse incidents can serve as a useful trigger for the imposition of additional requirements, because the rate is itself dependent not only upon a facility's success at combating sexual abuse, but its diligence in investigating allegations and in creating a culture in which victims are comfortable reporting incidents without fear of retaliation.

NPRM Question 15: Should this standard mandate a minimum frequency for the conduct of such rounds, and if so, what should it be?

Comment. Correctional stakeholders generally agreed that unannounced supervisory rounds should be conducted and are standard correctional practice. However, they recommended that the frequency of such rounds be left to agency discretion. One sheriff's office noted that flexibility in meeting the requirement would reduce resistance by supervisors. Advocacy groups made relatively few proposals regarding the frequency of such rounds, ranging from every 30 minutes, to weekly, to monthly, to ''often enough to prevent

abuse.'' Some comments noted that frequency should vary so as to preserve the element of surprise. Other comments stated that the requirement should apply to all facilities, not just those with more than 500 beds.

Response. The final standard expands the requirement for unannounced supervisory rounds to all prisons, jails, and juvenile facilities. The Department recognizes the value in this practice and believes it is appropriate for all facilities. The Department concludes that the precise frequency of such rounds is best left to agency discretion. The standard requires that facilities implement a policy and practice requiring ''unannounced rounds to identify and deter staff sexual abuse and sexual harassment,'' document the rounds, and conduct the rounds on night shifts and day shifts. Thus, rounds should be conducted on a regular basis in a manner intended to discourage staff sexual abuse and sexual harassment.

Comment. Two advocacy groups commented that the standard expressly should prohibit so-called ''trip calls,''—*i.e.,* actions by staff to tip off their colleagues that a supervisor is en route. These commenters asserted that allowing trip calls would defeat the purpose of unannounced rounds.

Response. The final standard adds a requirement that agencies maintain a policy prohibiting staff from alerting other staff members that these supervisory rounds are occurring, unless such announcement is related to the legitimate operational functions of the facility.

Comment. One law student commented that the standards should require a minimum frequency of unannounced supervisory rounds because the proposed standard could be satisfied by one unannounced round in a decade.

Response. The final standard requires prisons, jails, and juvenile facilities to implement a policy and practice of having intermediate level or higher-level supervisors conduct and document unannounced rounds. While the final standard does not specify a minimum frequency, a policy of one round per decade would clearly not serve as ''unannounced rounds *to identify and deter staff sexual abuse and sexual harassment''* (emphasis added).

Comment. One sheriff's office commented that any standard should contain wording that would exempt random supervisory checks in emergency and staffing shortage situations.

Response. Because the final standard does not mandate a specific time or frequency of such rounds, facilities may implement a reasonable policy that does not require such rounds during an emergency or temporary staffing shortage.

Comment. Another sheriff's office commented that establishing a reasonable minimum frequency is advisable to prevent disagreements between facility administrators and auditors as to whether the frequency of a facility's rounds is adequate. The commenter cautioned, however, that great care must be taken to ensure the requirement is reasonable, given the vast differences in facilities, and suggested that the minimum frequency should be once per month.

Response. While the final standard does not set a minimum frequency for unannounced supervisory rounds, it requires facilities to implement a policy and practice requiring ''unannounced rounds to identify and deter staff sexual abuse and sexual harassment.'' As such, the facilities may set the practice with regard to frequency of rounds, but rounds should be conducted on a regular basis in order to have an effect on staff sexual abuse and sexual harassment. The Department submits that once per month is unlikely to be frequent enough to have the intended effect.

Solicitation of Additional Comments Regarding the Juvenile Staffing Ratios Set Forth in § 115.313(c)

While this final rule is effective on the date indicated herein, the Department believes that further discussion is warranted regarding the aspect of this standard that requires secure juvenile facilities to maintain minimum staffing ratios during resident waking and sleeping hours. The standard contained in the final rule requires, in pertinent part, that ''[e]ach secure juvenile facility shall maintain staff ratios of a minimum of 1:8 during resident waking hours and 1:16 during resident sleeping hours, except during limited and discrete exigent circumstances, which shall be fully documented. Only security staff shall be included in these ratios.'' § 115.313(c). Accordingly, the Department solicits additional comments limited to this issue.

Commenters are encouraged to address (1) Whether the provision, as written, is appropriate; (2) whether the specific ratios enumerated in the provision are the appropriate minimum ratios, or whether the ratios should be higher or lower; (3) whether the provision appropriately allows an exception from the minimum ratios during ''limited and discrete exigent circumstances'' (as ''exigent circumstances'' is defined in § 115.5), or whether that exception should be broadened, limited, or otherwise revised; (4) whether certain categories of secure juvenile facilities should be exempt from the minimum ratio requirement or, conversely, whether certain categories of non-secure juvenile facilities should also be included in the minimum ratio requirement; (5) the extent to which the provision can be expected to be effective in combating sexual abuse; (6) the expected costs of the provision; (7) whether the required ratios may have negative unintended consequences or additional positive unintended benefits; (8) whether empirical studies exist on the relationship between staffing ratios and sexual abuse or other negative outcomes in juvenile facilities; [10] (9) whether specific objectively determined resident populations within a secure facility should be exempt from the minimum ratios; (10) whether additional categories of staff, beyond security staff, should be included in the minimum ratios; (11) whether the standard should exclude from the minimum ratio requirement facilities that meet a specified threshold of resident monitoring through video technology or other means, and, if so, what that threshold should include; and (12) whether the standard appropriately provides an effective date of October 1, 2017, for any facility not already obligated to maintain the staffing ratios.

Youthful Inmates (§§ 115.14, 115.114)

Sections 115.14 and 115.114 regulate the placement of persons under the age of 18 in adult prisons, jails, and lockups. The final rule refers to under-18 persons in such facilities as ''youthful inmates'' (in adult prisons and jails) and ''youthful detainees'' (in lockups).

The proposed rule did not contain a standard that governed the placement of under-18 inmates in adult facilities. Rather, the proposed rule noted, and solicited input regarding, ANPRM commenters' recommendations that the NPREC's recommended standards be supplemented with an additional

[10] While the Department has not identified studies that address the relationship between negative outcomes and *specific* staffing ratios, the Department has reviewed studies that address the relationship between negative outcomes and the quantity of staffing more generally. *See* New Amsterdam Consulting, *Performance-based Standards for Youth Correction and Detention Facilities: 2011 Research Report* (unpublished study; available in rulemaking docket); Aaron Kupchik and R. Bradley Snyder, *The Impact of Juvenile Inmates' Perceptions and Facility Characteristics on Victimization in Juvenile Correctional Facilities,* 89 The Prison Journal 265 (2009), available at *http://tpj.sagepub.com/content/89/3/265.*

standard to govern the placement and treatment of juveniles in adult facilities.

Some ANPRM commenters had proposed a full ban on placing persons under the age of 18 in adult facilities where contact would occur with incarcerated adults, while others proposed instead that the standards incorporate the requirements of the Juvenile Justice and Delinquency Prevention Act (JJDPA), 42 U.S.C. 5601 *et seq.* As the NPRM discussed, the JJDPA provides formula grants to States conditioned on (subject to minimal exceptions) deinstitutionalizing juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult (often referred to as ''status offenders''), separating juveniles from adult inmates in secure facilities, and removing juveniles from adult jails and lockups. *See* 42 U.S.C. 5633(a)(11)–(14). States that participate in the JJDPA Formula Grants Program are subject to a partial loss of funding if they are found not to be in compliance with specified requirements.

Generally speaking, the JJDPA applies to juveniles who are in the juvenile justice system, as opposed to those who are under the jurisdiction of adult criminal courts. The JJDPA's separation requirement applies only to juveniles who are alleged to be or are found to be delinquent, juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult, or juveniles who are not charged with any offense at all. *See* 42 U.S.C. 5633(a)(11)–(12). The JJDPA defines ''adult inmate'' as ''an individual who * * * has reached the age of full criminal responsibility under applicable State law; and * * * has been arrested and is in custody for or awaiting trial on a criminal charge, or is convicted of a criminal charge offense.'' 42 U.S.C. 5603(26).

Accordingly, the NPRM expressly solicited comments on whether the final rule should include a standard that governs the placement of juveniles in adult facilities, and if so, what the standard should require, and how it should interact with current JJDPA requirements and penalties.

After reviewing the comments in response to the questions posed in the NPRM, the Department has chosen to adopt a new standard that restricts, but does not forbid, the placement of juveniles in adult facilities. The standard applies only to persons under the age of 18 who are under adult court supervision and incarcerated or detained in a prison, jail, or lockup. Such persons are, for the purposes of this standard, referred to as ''youthful inmates'' (or, in lockups, ''youthful detainees'').

The standard imposes three requirements for juveniles placed in adult prisons or jails. First, it mandates that no youthful inmate may be placed in a housing unit in which he or she will have contact with any adult inmate through use of a shared day room or other common space, shower area, or sleeping quarters. Second, it requires that, outside of housing units, agencies either maintain ''sight and sound separation'' between youthful inmates and adult inmates—*i.e.,* prevent adult inmates from seeing or communicating with youth—or provide direct staff supervision when youthful inmates and adult inmates are together. Third, it requires that agencies make their best efforts to avoid placing youthful inmates in isolation to comply with this provision and that, absent exigent circumstances, agencies comply with this standard in a manner that affords youthful inmates daily large-muscle exercise and any legally required special education services, and provides access to other programs and work opportunities to the extent possible.

In lockups, the standard requires that juveniles and youthful detainees be held separately from adult detainees.

Comments and Responses

Comment. In response to the questions posed in the NPRM, comments varied widely.

Many commenters from advocacy organizations recommended a complete ban on incarcerating persons under the age of 18 in adult facilities, citing statistics indicating that youth in adult facilities face an increased risk of sexual abuse. Some advocates expressed concern that attempts to protect youth in adult facilities by housing them in segregated settings often cause or exacerbate mental health problems. Furthermore, advocates asserted, correctional agencies lack sufficient expertise in treating the unique needs of the underage population.

Some advocates proposed, as a fallback option, that the standard require a presumption that all youth be housed in juvenile facilities, unless a hearing determines that the interests of justice require housing in an adult facility.

Former members of the NPREC—whose final report did not include a recommended standard that would govern the placement of youth in adult facilities—submitted a comment that supported a standard that would require individuals below the age of 18 to be held in juvenile facilities, with some exceptions. Specifically, the former members recommended that a person under 18 be transferred to an adult facility only upon court order following a finding that the juvenile was violent or disruptive. If such a juvenile is transferred, the facility would need to comply with the standards governing juvenile facilities, separate the juvenile by sight and sound from adult inmates, ensure that the juvenile receives daily visits from health care providers and other staff, and visually check the juvenile every 15 minutes.

With regard to the intersection with the JJDPA, advocates indicated that the PREA standards could and should overlap with the conditions applied to formula grants under the JJDPA.

A significant number of correctional agency commenters opposed restricting the placement of youth in adult facilities. Some commenters noted that State law governs placement options for youth, and recommended that the Department not mandate a standard that would contravene such State laws. Other comments suggested that any such standard might improperly intrude into judicial functions by infringing on judges' discretion in making placement decisions. One comment suggested that a national standard governing the placement of juveniles in adult facilities would be impractical due to variation in facility size, layout, and staffing; another recommended against a standard regarding the placement of youth in adult facilities because the zero-tolerance mandate of § 115.11 already provides adequate protections to this population.

Some agency commenters recommended intermediate approaches. One commenter suggested that the final standard should allow youth to be placed in adult facilities only where there is ''total separation'' between the two populations. Another commenter suggested that adult facilities be required (1) to develop and implement a plan to provide additional protections for juvenile inmates, and (2) to report separately instances of abuse involving juvenile victims.

A number of agency commenters expressed concerns about importing JJDPA requirements into the PREA standards. Some remarked that this would result in ''double-counting'' and would result in undue weight being placed on this standard.

Response. After reviewing the comments received on this issue, the Department has decided to adopt a standard that restricts the placement of youth in adult facilities to the extent that such placement would bring youth into unsupervised contact with adults.

The Department recognizes that the statistical evidence regarding the victimization of youth in adult facilities is not as robust as it is for juvenile facilities, in large part because of the small number of under-18 inmates in adult facilities and the additional difficulties in obtaining consent to survey such inmates.[11]

The Department's Bureau of Justice Statistics (BJS) previously reported that, based on its surveys of facility administrators, 20.6 percent of victims of substantiated incidents of inmate-on-inmate sexual violence in adult jails in 2005 were under the age of 18, and 13 percent of such victims in 2006 were under 18,[12] despite the fact that under-18 inmates accounted for less than one percent of the total jail population in both years.[13] These findings derived from facility responses to BJS's *Survey of Sexual Violence* (SSV), which was administered to a representative sampling of jail facilities in addition to all Federal and State prison facilities. However, upon further review, BJS has determined that these figures are not statistically significant due to the small number of reported incidents and the small number of jails contained in the sample. Indeed, in reporting data from the 2007 and 2008 SSVs, BJS determined that the standard errors around the under-18 estimates for adult jails were excessively large, and consequently did not report the estimates separately, but rather reported combined figures for inmates under the age of 25. BJS has now determined that it should have done the same for 2005 and 2006.

However, this conclusion does not impact the findings of the same BJS surveys performed in State prisons, which surveyed all State prisons, in contrast to the jails surveys, which included only a sampling of jails. According to SSV reports, from 2005 through 2008, 1.5 percent of victims of substantiated incidents of inmate-on-inmate sexual violence in State prisons were under 18, even though under-18 inmates constituted less than 0.2 percent of the State prison population. While the number of such substantiated incidents is small—a total of 10—the combined data indicate that State prison inmates under the age of 18 are more than eight times as likely as the average State prison inmate to have experienced a substantiated incident of sexual abuse. Furthermore, the true prevalence of sexual abuse is undoubtedly higher than the number of substantiated incidents, due to the fact that many incidents are not reported, and some incidents that are reported are not able to be verified and thus are not classified as ''substantiated.'' Indeed, it is quite possible that prison inmates under 18 are more reluctant than the average inmate to report an incident because of their age and relative newness to the prison system.

BJS is currently in the middle of its third National Inmate Survey collection, which is expected to provide better data regarding victimization of under-18 inmates in adult prisons and jails. This extensive survey will reach inmates in 600 prisons and jails and is designed to specifically address this issue by oversampling for facilities that house under-18 inmates, and oversampling such inmates within those facilities. BJS expects to provide national-level estimates in early 2013.

The Department's review of State procedures indicates that at least 28 States have laws, regulations, or policies that restrict the confinement of youth in adult facilities to varying degrees. Some jurisdictions house these youth in juvenile facilities until they reach a threshold age and then transfer them to an adult facility. Other jurisdictions require physical separation or sight and sound separation between these youth and adult offenders. Yet other jurisdictions maintain dedicated programs, facilities, or housing units for youth in the adult system. Overall, there appears to be a national trend toward limiting interaction between adult and under-18 inmates. In recent years, a number of States have imposed greater restrictions on the placement of youth in adult facilities or have passed legislation to allow youth tried as adults to be housed in juvenile facilities.[14]

Furthermore, several accrediting and correctional associations have formulated position statements, issued standards, or provided comments urging either that all persons under 18 be held in juvenile facilities only, or that the youth be housed separately from adult inmates. For example, the National Commission on Correctional Healthcare, the American Jail Association, the National Juvenile Detention Association, and the National Association of Juvenile Correctional Agencies all support separate housing or placement for youth.[15]

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[11] The Department does not rely on Congress's finding in PREA that ''[j]uveniles are 5 times more likely to be sexually assaulted in adult rather than juvenile facilities,'' 42 U.S.C. 15601(4), because insufficient data exist to support that assessment. Congress's finding appears to derive from a study based on interviews with youth adjudicated or tried for violent offenses in four cities between 1981 and 1984. *See* Martin Frost, *et al., Youths in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy,* 40 Juv. & Fam. Ct. J. 1, 4 (1989). The study noted that 7 of 81 youth sentenced to adult facilities, or 8.6%, reported experiencing sexual assault, as compared to 2 of 59 youth sent to juvenile facilities, or 1.7%. *Id.* at 4, 10. While suggesting that this discrepancy, and discrepancies regarding other types of victimization, ''illustrate the increased danger of violence for juveniles sentenced to adult prisons,'' the authors noted that ''the victimization results are not statistically significant.'' *Id.* at 9.

[12] *See* Beck, BJS, *Sexual Violence Reported by Correctional Authorities, 2005,* Table 4 (2006); and Beck, BJS, *Sexual Violence Reported by Correctional Authorities, 2006,* Appendix Table 5 (2007).

[13] *See* Minton, BJS, *Jail Inmates at Midyear 2010—Statistical Tables,* Table 7 (2011).

[14] *See* 42 Pa. Cons. Stat. Ann. 6327 (under-18 Pennsylvania inmates awaiting trial as adults may be detained in juvenile facilities until reaching 18); Va. S.B. 259, 2010 Gen. Assem., Reg. Sess. (eff. July 1, 2010) (presumption that under-18 Virginia inmates awaiting trial as adults be held in juvenile facilities); Colo. Rev. Stat. 19–2–517 (2012) (preventing 14- and 15-year-olds from being tried as adults except in murder and sexual assault cases; requires prosecutors to state reasons and hear from defense counsel before exercising discretion to try 16- and 17-year-olds as adults); Ariz. S.B. 1009, 49th Leg., 2d Reg. Sess. (2010) (eliminating eligibility of some juveniles to be tried as adults by requiring a criminal charge brought against the juvenile to be based on their age at the time the offense was committed and not when the charge was filed); Utah H.B. 14, Gen. Sess. (2010) (granting justice court judge discretion to transfer a matter at any time to juvenile court if it is in the best interest of the minor and the juvenile court concurs); Miss. S.B. 2969, 2010 Leg., Reg. Sess. (2010) (limiting the types of felonies that 17-year- olds can be tried for as an adult); Wash. Rev. Code 13.04.030(1)(e)(v)(E)(III) (2012) (allowing juveniles to be transferred back to juvenile court upon agreement of the defense and prosecution.); Wash. Rev. Code 13.40.020(14) (providing that juveniles previously transferred to adult court are not automatically treated as adults for future charges if found not guilty of original charge); 2009 Nev. Stat. 239 (raising the age a juvenile may be presumptively certified as an adult from 14 to 16); Me. Rev. Stat. Ann. tit. 17–A 1259 (2011) (providing that juveniles under 16 who receive adult prison sentence must serve sentence in juvenile correctional facility until their 18th birthday); 2008 Ind. Acts 1142–1144 (limiting juvenile courts' ability to waive jurisdiction to felonies and requiring access for Indiana criminal justice institute inspection and monitoring of facilities that are or have been used to house or hold juveniles); Conn. Gen. Stat. 54–76b–c (2012) (creating presumption that 16- and 17-year-olds are eligible to be tried as youthful offenders unless they are charged with a serious felony or had previously been convicted of a felony or adjudicated a serious juvenile offender); 75 Del. Laws 269 (2005) (limiting Superior Court's original jurisdiction over robbery cases involving juveniles to crimes committed by juveniles who had previously been adjudicated delinquent for a felony charge and thereafter committed a robbery in which a deadly weapon was displayed or serious injury inflicted); 705 Ill. Comp. Stat. 405/5–130 (2011) (eliminating the requirement that 15- to 17-year-olds charged with aggravated battery with a firearm and violations of the Illinois Controlled Substances Act, while on or near school or public housing agency grounds, be tried as adults).

[15] *See* Letter from Campaign for Youth Justice, et al., to Attorney General Holder, 4 (April 4, 2011), available at *http://www.campaignforyouthjustice.org/documents/PREA_sign-on_letter.pdf*; NCCHC Position Statement, *Health Services to Adolescents in Adult Correctional Facilities,* adopted May 17, 1998, available at *http://www.ncchc.org/resources/statements/adolescents.html*.

Although many jurisdictions have moved away from incarcerating adults with juveniles, a significant number of youth continue to be integrated into the adult inmate population. The Department estimates that in 2009, approximately 2,778 juveniles were incarcerated in State prisons and 7,218 were held in local jails.[16]

As a matter of policy, the Department supports strong limitations on the confinement of adults with juveniles. Under the Federal Juvenile Justice and Delinquency Prevention Act (a separate statute from the JJDPA), 18 U.S.C. 5031 *et seq.,* ''[n]o juvenile committed, whether pursuant to an adjudication of delinquency or conviction for an offense, to the custody of the Attorney General may be placed or retained in an adult jail or correctional institution in which he has regular contact with adults incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges.'' 18 U.S.C. 5039. Accordingly, the Federal Bureau of Prisons contracts with juvenile facilities to house the few juvenile inmates in its custody. The United States Marshals Service endeavors to place juveniles in juvenile facilities; where that is not possible, the juvenile is placed in an adult facility, separated by sight and sound from adult inmates. In addition, the Department endorsed the Juvenile Justice and Delinquency Prevention Reauthorization Act of 2009, which, had it been enacted, would have (among other changes) extended the JJDPA's sight and sound separation and jail removal core requirements to youth under adult criminal court jurisdiction awaiting trial, unless a court specifically finds that it is in the interest of justice to incarcerate the youth in an adult facility.

For a variety of reasons, however, the Department has decided against adopting a standard that would generally prohibit the placement of youth in adult facilities. Most importantly, the Department is cognizant that its mandate in promulgating these standards extends only to preventing, detecting, and responding to sexual abuse in confinement facilities. While some commenters asserted that confining youth in adult facilities impedes access to age-appropriate programming and services and may actually increase recidivism, the PREA standards cannot include a ban on those bases. Rather, the Department must focus on the extent to which such a ban would enhance the ability to prevent, detect, and respond to sexual abuse. To be sure, implicit in PREA is the authority to regulate and restrict well-intentioned interventions aimed at preventing sexual abuse that inadvertently lead to other forms of harm. Thus, the Department may adopt a standard that governs the placement of inmates in isolation, and the concomitant denial of programming, where such placement is used as a means of protecting vulnerable inmates against sexual abuse.

In addition, imposing a general ban on the placement of youth in adult facilities, or banning such placements unless a court finds that the youth has been violent or disruptive in a juvenile facility, would necessarily require a fundamental restructuring of existing State laws that permit such placement. For example, many States would require legislation redefining the age of criminal responsibility, eliminating or amending youthful offender statutes, making changes to direct-file and transfer laws, or limiting judicial discretion to determine where a youth should be placed. Given the current state of knowledge regarding youth in adult facilities, and the availability of more narrowly tailored approaches to protecting youth, the Department has decided not to impose a complete ban at this time through the PREA standards. As noted above, BJS is currently collecting additional data regarding this issue, and the Department reserves the right to reexamine this question if warranted.

Juveniles in adult facilities can be protected from sexual abuse by adult inmates by preventing unsupervised contact with adult inmates. The Department adopts a final standard aimed at preventing such unsupervised contact without inadvertently causing other harm to youth.

First, the standard bans the placement of youth in housing units where they interact with adults. Youth are vulnerable to abuse not only by cellmates, but also by adults in their unit who may have contact with them. To be sure, if youth have their own cells, and if the housing unit lacks a common day room or shower area, then such dangers are sufficiently mitigated. Thus, the standard requires that no youthful inmate be placed in a housing unit in which he or she will have sight, sound, or physical contact with any adult inmate through use of a shared day room or other common space, shower area, or sleeping quarters.

Second, the standard limits interactions between youthful and adult inmates in other areas of the facility. The most basic way to limit such interaction is to ensure sight and sound separation. However, some facilities may find it infeasible to achieve total sight and sound separation without resorting to the use of isolation and denial of programming, which raise significant concerns of their own, as discussed below. Thus, the standard provides additional flexibility by allowing youthful inmates to commingle with adult inmates as long as direct staff supervision is provided. Such supervision must be sufficient to ensure that youth are within sight at all times.

Third, the standard restricts the use of isolation of youth as a means of compliance with the requirements discussed above. While confining youth to their cells is the easiest method of protecting them from sexual abuse, such protection comes at a cost. Isolation is known to be dangerous to mental health, especially among youth. Among other things, isolation puts youth at greater risk of committing suicide. A recent survey of juvenile suicides in confinement found that 110 suicides occurred in juvenile facilities between 1995 and 1999. Analyzing those suicides for which information was available, the survey determined that 50.6 percent of the suicides occurred when inmates were confined to their rooms outside of traditional nonwaking hours as a behavioral sanction.[17] (To be sure, the suicide risk may be higher among juveniles who are committed to isolation as punishment, rather than among juveniles isolated for protection from the general population, as is more common in adult facilities.)

Youth appear to be at increased risk of suicide in adult facilities, although the extent to which isolation is a contributing factor is unknown. Based on the BJS Deaths in Custody Reporting Program, 2000–2007, 36 under-18 inmates held in local jails died as a result of suicide (with the number varying from 3 to 7 each year). The suicide rate of youth in jails was 63.0 per 100,000 under-18 inmates, as compared to 42.1 per 100,000 inmates overall, and 31 per 100,000 inmates aged 18–24. (By contrast, in the general population, the suicide risk is twice as high for persons aged 18–24 than for persons under 18.) The suicide rate of youth was approximately six times as high in jails than among 15- to 19-year-olds in the U.S. resident population

[16] *See* West, Prison Inmates at Midyear 2009–Statistical Tables, Table 21, BJS (Rev. 2011); Minton, Jail Inmates at Midyear 2010–Statistical Tables, Table 6, BJS (Rev. 2011).

[17] *See* Lindsay Hayes, *Juvenile Suicide in Confinement: A National Survey* at 10, 28–29 (Feb. 2004).

with a comparable gender distribution (10.4 per 100,000 in 2007).[18]

Accordingly, the standard requires that agencies make their best efforts to avoid placing youth in isolation in order to comply with this standard. For example, rather than relying on the use of isolation, agencies should attempt to designate dedicated units, wings, or tiers for confined youth; enter into inter-agency, inter-facility, or cooperative agreements for the common placement of youth; temporarily house youth in a juvenile facility; construct partitions or other low-cost facility alterations; or explore alternatives to detention or incarceration for youth in the agency's custody and care. If isolation is unavoidable, the final standard requires that, absent exigent circumstances, agencies provide youth with daily large-muscle exercise and any special education services otherwise mandated by law. Youth also shall have access to other programs and work opportunities to the extent possible. The Department believes it is not necessary to impose the additional requirements suggested by former NPREC members. Requiring a facility to abide by the standards for juvenile facilities in addition to the standards for adult prisons and jails could lead to confusion and is unlikely to have an impact on the safety of the youth. Nor is it likely that mandating visits by staff or visual checks would provide enhanced protection beyond the basic sight and sound separation.

The Department is mindful of agency concerns regarding cost, feasibility, and preservation of State law prerogatives. The final standard affords facilities and agencies flexibility in devising an approach to protecting youth. Compliance may be achieved by (1) Confining youth to a separate unit, (2) transferring youth to a facility within the agency that enables them to be confined to a separate unit, (3) entering into a cooperative agreement with an outside jurisdiction to enable compliance, or (4) ceasing to confine youth in adult facilities as a matter of policy or law. Agencies may, of course, combine these approaches as they see fit.

The Department has decided not to incorporate into the standards for adult prisons and jails the JJDPA requirements that apply to juveniles who are *not* tried as adults. As noted above, § 115.14 applies only to juveniles under the jurisdiction of adult courts, whereas the JJDPA's separation requirement applies only to juveniles who are alleged to be or are found to be delinquent, juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult, or juveniles who are not charged with any offense at all. *See* 42 U.S.C 5633(a)(11)–(12).

The high degree of compliance with the JJDPA indicates that the incentives and penalties under the Act are operating successfully to ensure that juveniles who are tried as juveniles are not intermingled with adults except under the narrow circumstances the JJDPA allows. As discussed above, the purposes of the two statutes are different: The JJDPA aims to protect youth and discourage delinquency, whereas PREA is more narrowly limited to preventing sexual abuse. Thus, only a portion of the requirements that States must fulfill in order to receive JJDPA grants is relevant to protecting youth from sexual abuse. The Department concludes that to import such requirements in a piecemeal manner could risk confusion and would not materially increase the protection of youth in the juvenile justice system.

Limits to Cross-Gender Viewing and Searches (§§ 115.15, 115.115, 115.215, 115.315)

Summary of Proposed Rule

The standard contained in the proposed rule (numbered as §§ 115.14, 115.114, 115.214, and 115.314) prohibited cross-gender pat-down searches in juvenile facilities, but did not impose a general ban in other facilities. The proposed standard did, however, require agencies to exempt from non-emergency pat-down searches those inmates who have suffered prior cross-gender sexual abuse while incarcerated. That provision attempted to address the possibility that an inmate who has experienced prior sexual abuse would experience a cross-gender pat-down search as particularly traumatizing, even if the search was conducted properly.

The proposed standard also prohibited cross-gender strip searches absent an emergency situation or when conducted by a medical practitioner, and required documentation for cross-gender strip searches.

Recognizing that transgender inmates may be traumatized by genital examinations, the proposed standard prohibited examining a transgender inmate to determine genital status, unless genital status is unknown, in which case such an examination would be conducted in private by a medical practitioner. The proposed standard also required facilities to minimize opposite-gender viewing of inmates as they shower, perform bodily functions, or change clothes. The standard provided an exception for such viewing where incidental to routine cell checks.

The proposed standard also required agencies to train security staff in properly conducting cross-gender pat-down searches, and searches of transgender inmates, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

Changes in Final Rule

The most significant change in this standard is the inclusion of a ban on cross-gender pat-down searches of female inmates in adult prisons and jails and in community confinement facilities, absent exigent circumstances. To facilitate compliance, most facilities will have three years to comply. Recognizing that this requirement may be more difficult for smaller facilities to implement, facilities with a rated capacity of less than 50 inmates are provided five years in which to implement the ban. The final standard also clarified that women's access to programming or out-of-cell opportunities should not be restricted to comply with this provision. In addition, the final standard requires facilities to document all cross-gender searches of female inmates.

The final standard retains the general rule against cross-gender strip searches and body cavity searches and clarifies that ''body cavity searches'' means searches of the anal or genital opening. The exception for medical practitioners has been retained; the emergency exception has been replaced with an exception for ''exigent circumstances'' to be consistent with similar changes from ''emergency'' to ''exigent'' throughout the final standards.

The final standard imposes a complete ban on searching or physically examining a transgender or intersex inmate for the sole purpose of determining the inmate's genital status. Rather, if the inmate's genital status is unknown, it may be determined during conversations with the inmate, by

[18] *See* Margaret E. Noonan, BJS, *Deaths in Custody: Local Jail Deaths,* Table 9 (Oct. 28, 2010); Margaret E. Noonan, BJS, *Mortality in Local Jails, 2000–2007,* Table 9 (July 2010); BJS, *2002 Survey of Inmates in Local Jails* (unpublished data); BJS, *Annual Survey of Jails, 2007* (unpublished data); Melonie Heron, Ph.D., National Vital Statistics System, *Deaths: Leading Causes for 2007,* 59 National Vital Statistics Reports, No. 8, table 1 (Aug. 26, 2011); BJS, *Deaths in Custody Reporting Program, 2002–2005,* available at *http://bjs.ojp.usdoj.gov/content/dcrp/juvenileindex.cfm; Census of Juveniles in Residential Placement, 2001, 2003, and 2006,* data available at *http://www.ojjdp.gov/ojstatbb/ezacjrp/asp/selection.asp.* Although the rate among 15- to 19-year-olds in the U.S. resident population was 6.9 per 100,000, the estimated rate for a comparable gender distribution is higher after adjusting for the fact that 92.3% of youth held in jails were male.

reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner. The final standard also retains the requirement for agencies to train security staff in conducting professional and respectful cross-gender pat-down searches and searches of transgender inmates, in the least intrusive manner possible, consistent with security needs. The final standard extends these protections to intersex inmates as well.

The final standard retains the requirement that each facility implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in the case of emergency (now reworded as ''exigent circumstances''), or when such viewing is incidental to routine cell checks. The final standard removes ''by accident'' from the list of exceptions, and adds a requirement that staff of the opposite gender announce their presence when entering an inmate housing unit.

The final standard retains the ban on cross-gender pat-down searches for all residents in juvenile facilities, and narrows the exceptions to the ban to include only exigent circumstances.

Comments and Responses

Comments on cross-gender pat-down searches. The issue of cross-gender pat-down searches generated a substantial number of comments. In general, advocates strongly supported a ban on all cross-gender pat-down searches, as did two members of Congress. Some correctional commenters also noted that same-gender pat-down searches are accepted practice, but emphasized the need for an exception that would permit cross-gender pat-down searches in exigent circumstances. Advocates suggested that a ban on cross-gender pat-down searches could be accomplished with minimal expense by limiting pat-down searches to areas with a high contraband risk, or assigning a roving officer to various posts. Most current and former inmates also supported a ban on all cross-gender pat-down searches. Other commenters stated that cross-gender searches contribute to a sexualized environment. Two commenters went further by proposing limits to cross-gender supervision, not just cross-gender searches.

A number of advocates strongly recommended that, at a minimum, the final standard prohibit cross-gender pat-down searches of women. Citing a 1999 study conducted by the National Institute of Corrections, advocates suggested that numerous States currently ban cross-gender pat-down searches of female inmates. A handful of commenters recommended that such a ban be phased in over a period of two or three years to ease the transition.

In general, agency commenters supported the proposed standard as written regarding cross-gender searches. Several State correctional agencies remarked that prohibiting cross-gender pat-down searches of female inmates was feasible, but that it would be difficult to extend a cross-gender ban to male inmates. Other agency commenters stated that the training requirement would address any problems with cross-gender searches.

Commenters noted that gender-based requirements could implicate laws that bar discrimination in employment on the basis of sex. Of these commenters, most expressed concern regarding the possibility of a standard that prohibited both male-on-female pat-down searches and female-on-male cross-gender pat-down searches. A smaller number of commenters expressed similar concerns with regard to the possibility of a standard that prohibited only male-on-female searches. A larger number, however, expressed confidence that a ban on cross-gender pat-down searches of female inmates could be implemented in a manner that would not violate employment laws. Several correctional agency commenters observed that requiring same-gender pat-down searches of female inmates, except in exigent circumstances, is already an accepted practice in adult prisons and jails.

Multiple agency commenters expressed concern that a complete prohibition on cross-gender pat-down searches could violate collective bargaining agreements, which affect staff assignments, if the prohibition prevented staff of a particular gender from retaining a particular assignment.

Both advocacy and agency commenters strongly criticized the exemption from cross-gender pat-down searches for inmates who have suffered documented prior cross-gender sexual abuse while incarcerated. Commenters expressed concern that inmates who avail themselves of the exemption would be labeled and ostracized, and would possibly be putting themselves at greater risk for further abuse. Commenters expressed doubt that inmates would be willing to reveal their sexual abuse history in such a manner, which would likely become known to a significant number of staff and inmates if only victims of prior abuse were exempted from cross-gender pat-down searches. A number of former inmates also expressed skepticism that requests for exemptions would actually be honored.

Response. The Department is persuaded that adopting a standard that generally prohibits cross-gender pat-down searches of female inmates in prisons and jails will further PREA's mandate of preventing sexual abuse without compromising security in corrections settings, infringing impermissibly on the employment rights of officers, or adversely affecting male inmates. The final standard prohibits cross-gender pat-down searches of female inmates and residents in adult prisons, jails, and community confinement facilities, absent exigent circumstances, but does not prohibit such searches of male inmates. With regard to juvenile facilities, the final standard retains the proposed standard's prohibition on all cross-gender pat-down searches of either male or female residents, absent exigent circumstances.

Pat-down searches are a daily occurrence in corrections settings and, when performed correctly, require staff to have intimate bodily contact with inmates. Although most pat-down searches are conducted legitimately by conscientious staff, it can be difficult to distinguish between a pat-down search conducted for legitimate security purposes and one conducted for the illicit gratification of the staff person, which would constitute sexual abuse.

Female inmates are especially vulnerable owing to their disproportionate likelihood of having previously suffered abuse. A BJS survey conducted in 2004 found that 42 percent of female State prisoners and 28 percent of female Federal prisoners reported that they had been sexually abused before their current sentence, as compared to 6 percent of male State prisoners and 2 percent of male Federal prisoners. A BJS survey of jail inmates, conducted in 2002, found that 36 percent of female inmates reported sexual abuse prior to incarceration, compared to 4 percent of male inmates.[19] According to studies, women with histories of sexual abuse—including women in prisons and jails—are particularly traumatized by subsequent abuse.[20] In addition, even a

[19] BJS, unpublished data, *2004 Survey of Inmates in State and Federal Correctional Facilities and 2002 Survey of Inmates in Local Jails.*

[20] *See* Catherine C. Classen, Oxana Gronskaya Palesh, & Rashi Aggarwal, *Sexual Revictimization: A Review of the Empirical Literature,* 6 Trauma, Violence, & Abuse 103, 117 (2005) (''There is

Continued

professionally conducted cross-gender pat-down search may be traumatic and perceived as abusive by inmates who have experienced past sexual abuse. *See Jordan* v. *Gardner,* 986 F.2d 1521, 1526 (9th Cir. 1993) (*en banc*) (striking down cross-gender pat-downs of female inmates as unconstitutional ''infliction of pain'' where there was evidence that a high percentage of the female inmate population had a history of traumatic sexual abuse by men and were being re-traumatized by the cross-gender pat-down searches). Thus, even a professionally conducted male-on-female pat-down search increases the risk of harm to female inmates, who have a high prevalence of past prior abuse. *See id.* at 1525 (affirming district court holding that there ''is a high probability of great harm, including severe psychological injury and emotional pain and suffering, to some inmates, from these searches, even if it was properly conducted'').

Most staff sexual abuse of female inmates is committed by male staff. The BJS National Inmate Survey found that 71.8 percent of female prisoners who were victims of sexual abuse by staff reported that the staff perpetrator was male in every instance, compared to 9.3 percent who reported that the staff perpetrators were exclusively female.[21] Furthermore, 36.7 percent of female inmates who reported sexual touching indicated that they experienced sexual touching during a pat-down search.

An analysis of allegations reported by BOP inmates to BOP's Office of Internal Affairs, conducted by the Department's Office of the Inspector General (OIG), provides further indication of vulnerability of female inmates to sexual abuse at the hands of male staff. OIG found that, from fiscal year 2001 through 2008, 45.6 percent of all allegations of criminal cross-gender sexual abuse committed by BOP staff were lodged by female prisoners, even though women made up less than 7 percent of the BOP population.[22] BOP did not prohibit cross-gender pat-down searches of female inmates during this time period, and OIG reported that ''BOP officials believed that male staff members were most often accused of sexual misconduct stemming from pat searches.'' [23]

A thorough pat-down search requires staff to engage in intimate touching of the inmate's clothed body, including the breasts, buttocks, and genital regions. Given that female inmates are significantly more likely to be sexually abused by male officers than by female officers, the Department determined that it would be prudent, as a prophylactic measure to decrease the risk of sexual abuse, to prohibit the necessarily intimate touching that occurs during routine cross-gender pat-down searches and that may inadvertently contribute to the development of a sexualized environment within a facility. A ban on cross-gender pat-down searches of female inmates, absent exigent circumstances, is consistent with effective corrections policy, as evidenced by the fact that a significant number of State and local corrections systems already abide by such a restriction, as discussed below.

Currently, as a matter of law or policy, most State prison systems do not conduct cross-gender pat-down searches of female inmates, absent exigent circumstances. At the request of the Department's PREA Working Group, the National Institute of Corrections (NIC) conducted a survey of State corrections systems and found that at least 27 States ban the practice, and that it is common practice in several other States for male officers to perform pat-down searches of female prisoners only under exigent circumstances. While comparable data from jails are unavailable, representatives of twelve large jail agencies who attended a PREA listening session convened by the Department all stated that they do not permit cross-gender pat-down searches of females. The Department is not aware of any cases successfully challenging the practice of banning only cross-gender pat-down searches of female prisoners, despite the widespread prevalence of these restrictions.

The Department believes that laws that prohibit employment discrimination on the basis of sex pose no obstacle to the implementation of this standard. Rather, the prohibition of cross-gender pat-down searches of female inmates can (and must) be implemented in a manner consistent with Federal laws prohibiting sex discrimination in employment, to ensure that implementation has only a *de minimis* impact on employment opportunities, or, if the impact is more than *de minimis,* that any sex-based limitations on employment opportunities satisfy the *bona fide* occupational qualification requirement of Federal employment law.

Notably, female inmates make up a very small proportion of the total number of incarcerated individuals.[24] The small proportion of female inmates provides further support for agencies' ability to implement a ban on cross-gender pat-down searches of female inmates without negatively impacting employment opportunities.

Title VII of the Civil Rights Act of 1964 states that ''it shall not be an unlawful employment practice for an employer to hire and employ employees * * * on the basis of * * * sex * * * where * * * sex * * * is a bona fide occupational qualification [''BFOQ''] reasonably necessary to the normal operation of that particular business or enterprise.'' 42 U.S.C. 2000e–2(e)(1).[25] However, employment decisions that have only a *de minimis* effect on the employment opportunities of

considerable evidence that sexual revictimization is associated with more distress compared to one incident of sexual victimization. * * * The general finding appears to be that women who are revictimized suffer more PTSD symptoms''); Barbara Bloom, Barbara Owen, and Stephanie Covington, *Gender-Responsive Strategies: Research, Practice, and Guiding Principles for Women Offenders,* at 37, NIC (2003) (''In addition, standard policies and procedures in correctional settings (*e.g.,* searches, restraints, and isolation) can have profound effects on women with histories of trauma and abuse, and often act as triggers to retraumatize women who have post-traumatic stress disorder (PTSD).''); Danielle Dirks, *Sexual Revictimization and Retraumatization of Women in Prison,* 32 Women's Stud. Q. 102, 102 (2004) (''For women with previous histories of abuse, prison life is apt to simulate the abuse dynamics already established in these women's lives, thus perpetuating women's further revictimization and retraumatization while serving time.''). In 2009, the Department's Office of the Inspector General, in a report on BOP's efforts at combating sexual abuse by staff, noted that ''because female prisoners in particular often have histories of being sexually abused, they are even more traumatized by further abuse inflicted by correctional staff while in custody.'' OIG, United States Department of Justice, *The Department of Justice's Efforts to Prevent Staff Sexual Abuse of Federal Inmates* at 1 (2009).

[21] *See* BJS, *Sexual Victimization in Prisons and Jails Reported by Inmates, National Inmate Survey, 2008–09,* at 24. Corresponding figures in jails were 62.6% and 27.6%, respectively. Numbers do not sum to 100% because some inmates reported being victimized by both male and female staff.

[22] *See* OIG, United States Department of Justice, *The Department of Justice's Efforts to Prevent Staff Sexual Abuse of Federal Inmates* at 26–28 (2009). Three hundred and twenty-five allegations of criminal sexual abuse were made by female inmates against male staff, as compared to 382 allegations by male inmates against female staff.

[23] *See id.* at 26.

[24] *See* BJS, *Annual Survey of Jails* (2010) (12% of jail inmates are female); BJS, *Prisoners in 2009* (7% of prison inmates are female).

[25] The BFOQ language is found in the section of Title VII that pertains to private employers and State and local government employers. The section of Title VII that applies to executive branch agencies such as BOP does not expressly set forth a BFOQ defense. *See* 42 U.S.C. 2000e-16(a). While the Department is not aware of any case law on the issue, the Equal Employment Opportunities Commission has applied the Title VII BFOQ defense in petitions against Federal employers. *See, e.g., Gray* v. *Nicholson,* EEOC DOC 0720050093 (Feb. 9, 2007). Accordingly, the Department believes that the defense would be available to BOP and other Federal employers on the same terms as other employers.

correctional employees do not trigger or require a BFOQ analysis.

To establish a BFOQ defense, a facility must show that a gender-based job qualification is related to the essence or central function of the facility, and that the qualification is reasonably necessary to the normal operations of the facility. *See Dothard* v. *Rawlinson,* 433 U.S. 321, 332–37 (1977) (holding that exclusion of females in contact positions in Alabama's violent male maximum security prisons may satisfy BFOQ requirement). However, the requirement that only female staff perform pat-down searches on female inmates is unlikely to require a BFOQ for single-sex employment positions in a facility because, as shown by nationwide experience, facilities will almost always be able to implement the requirement in a minimally intrusive way that has only a *de minimis* effect on employment opportunities. *See Tharp* v. *Iowa Dep't of Corr.,* 68 F.3d 223, 226 (8th Cir. 1995) (en banc) (holding that a prison employer's reasonable gender-based job assignment policy, particularly a policy that is favorable to the protected class of women employees, will be upheld if it imposes only a minimal restriction on other employees, and therefore a BFOQ analysis was unnecessary).

Sex-based assignment policies in correctional facilities often impose only a *de minimis* restriction on the employment opportunities of male officers when facilities preclude male employees from working only a small percentage of certain shifts or job posts at particular facilities but make numerous comparable shifts or posts available to males. *See Robino* v. *Iranon,* 145 F.3d 1109, 1110–11 (9th Cir. 1998) (restricting six out of 41 guard positions to women had a *de minimis* effect). When only minor adjustments of staff schedules and job responsibilities are at issue, the effect on employment rights is *de minimis. See Jordan,* 986 F.2d at 1539 (Reinhardt, J. concurring); *Tipler* v. *Douglas Cnty.,* 482 F.3d 1023, 1025–27 (8th Cir. 2007) (temporary reassignments with no effect on promotional opportunities had a *de minimis* effect); *Tharp,* 68 F.3d at 225–27 (policy requiring female residential advisors to staff a women's unit in a mixed-gender minimum security had a *de minimis* effect because the prison's male employees did not suffer termination, demotion, or a reduction in pay). Agencies may implement a ban on cross-gender pat-down searches of female inmates in the manner most appropriate for each facility.

Facilities and agencies should strive to implement this provision in a manner that has a *de minimis* effect so that a BFOQ inquiry is not required. If a facility or agency implements the cross-gender pat-down ban in a way that creates materially adverse changes in the terms and conditions of employment by precluding staff of either sex from certain positions entirely, thereby affecting their promotions, additional pay, seniority, or future eligibility for senior positions, then the facility would be required to conduct a BFOQ inquiry. As noted above, such an inquiry must demonstrate that the manner of implementation is both related to the central function of the facility and reasonably necessary for the successful operation of the facility. *See Dothard,* 433 U.S. at 335–37. There are numerous ways in which facilities can eliminate cross-gender pat-down searches of female inmates, in conformance with employment laws. For example, agencies can assign or rotate female staff to certain key posts within the facility, so long as female staff are not limited in their opportunities for advancement as compared to similarly situated male staff; provide for female float staff who can conduct searches as necessary; allow staff to transfer between agency facilities to achieve better gender balance; or implement institutional schedules that maximize availability of female staff for pat-down searches of female inmates.

It is important to note that the standard prohibiting cross-gender pat-down searches does not, in and of itself, create or establish a BFOQ defense to claims of sex discrimination in employment. If a correctional facility cannot implement this standard in a manner that imposes only a *de minimis* impact on employment opportunities for either sex, it must undertake an individualized assessment of its particular policies and practices and the particular circumstances and history of its inmates to determine whether altering or reserving job duties or opportunities to one sex would justify a BFOQ defense with respect to each particular employment position or opportunity potentially affected by the agency's implementation of the standards.

Female-preference sex-based employment assignments in correctional facilities can meet the BFOQ standard if such assignments are reasonably necessary to the normal operation of the particular facilities at which they are used. This is a high standard. For example, one agency used its history of rampant sexual abuse of female prisoners to justify a BFOQ and designate 250 corrections officer and residential unit officer positions in the housing units of State female prisons as ''female only.'' The facially discriminatory plan, which affected a significant number of male officers, was permissible because sex was a BFOQ for these particular facilities based on the facilities' histories. *See Everson* v. *Michigan Dep't of Corr.,* 391 F.3d 737, 747–61 (6th Cir. 2004). Additionally, based on the totality of the circumstances at a specific facility, sex may be a BFOQ for all positions in the living units of a women's maximum security prison where the practice of employing only female guards in these positions is reasonably necessary to the goal of female prisoner rehabilitation. *See Torres* v. *Wisconsin Dep't of Health & Human Servs.,* 859 F.2d 1523, 1530–32 (7th Cir. 1988) (en banc).

However, female-preference sex-based staffing polices do not meet the high standard necessary to establish a BFOQ defense without a high correlation between sex and ability to perform a particular position. *See Breiner* v. *Nevada Dep't of Corr.,* 610 F.3d 1201, 1213 (9th Cir. 2010). For example, being female was not a BFOQ for all three lieutenant positions at a women's correctional facility because the facility did not demonstrate that precluding men from serving in supervisory positions in women's prisons was necessary to meet its goal of reducing instances of sexual abuse of female inmates by male correctional officers. *See id.* at 1210–16. A policy banning male officers from all posts in female housing units also did not meet the requirements necessary to establish a BFOQ defense when it was predicated on a few unspecified past incidents of sexual misconduct and generalized arguments that the mere presence of males caused distress to past victims of sexual abuse. *See Westchester Cnty. Corr.* v. *Cnty. of Westchester,* 346 F. Supp. 2d 527, 533–36 (S.D.N.Y. 2004).

In addition, the final standard allows all facilities with more than 50 beds three years from the effective date of the PREA standards for implementation, and five years for facilities smaller than 50 beds. This extended time frame provides facilities of all sizes and security levels with ample opportunity to develop and implement a practice that will protect female prisoners without undue burden on the operations of the facility. Furthermore, to the extent that agencies want to increase their percentage of female staff to facilitate compliance with the standards, agencies can take advantage of natural attrition to recruit and hire additional female staff without terminating male staff. Most agencies will be able to implement the ban in a

manner that has only a *de minimis* effect on employment opportunities and assignments for male employees. And given the lengthy time period allowed to come into compliance, and the level of discretion retained by agencies, the Department believes that the standard can be implemented in accordance with collective bargaining agreements.

The Department has chosen not to include in the final standard a similar prohibition on female staff conducting pat-down searches of male inmates. The Department concludes that the benefit of prohibiting cross-gender pat-down searches of male inmates is significantly less than the benefit of prohibiting cross-gender pat-down searches of female inmates, whereas the costs of the former are significantly higher than the costs of the latter. A ban on cross-gender pat-down searches only of female prisoners does not violate the Equal Protection Clause of the Fourteenth Amendment because male and female prisoners are not similarly situated with respect to bodily searches. Male inmates are far less likely than female inmates to have a history of traumatic sexual abuse and are less likely to experience the retraumatization that may affect female inmates due to a cross-gender pat-down search. *See Laing* v. *Guisto,* 92 Fed. Appx. 422, 423 (9th Cir. 2004); *Timm* v. *Gunter,* 917 F.2d 1093, 1102–03 (8th Cir. 1990); *Jordan,* 986 at 1525–27; *Tipler,* 482 F.3d at 1027–28; *Colman* v. *Vasquez,* 142 F. Supp. 2d 226, 232 (D. Conn. 2001).

With regard to cost, the Department reaffirms its assessment, as stated in the proposed rule, that a ban on cross-gender pat-down searches of male inmates would impose significant financial costs and could limit employment opportunities for women. The correctional population remains overwhelmingly male: 88 percent of jail inmates and 93 percent of prison inmates are men. Correctional staff, by contrast, are considerably more balanced by sex: according to BJS data, 25 percent of Federal and State correctional officers were female as of 2005, and 28 percent of correctional officers in local jails were female as of 1999.[26] Female participation in the correctional workforce has been increasing over the past two decades, and it is likely that the disparity between the percentage of female correctional staff and the percentage of female inmates will continue to grow. In addition, there is significant variation across States: The percentage of female correctional officers in State prisons ranges from 9 percent in Rhode Island to 63 percent in Mississippi. Jurisdiction-level data are not available for local jails, but statewide data indicate that the comparable aggregate percentages range from 8 percent in Massachusetts to 43 percent in Nebraska. In the growing number of correctional agencies where the percentage of female correctional staff is substantial, but the female inmate population is (as in most places) quite small, it could be difficult to implement a ban on female staff patting down male inmates without a significant adverse impact on employment opportunities for women, who would be unable to occupy correctional positions that involve patting down male inmates, and whose prospects for advancement could suffer as a result. *See Madyun* v. *Franzen,* 704 F.2d 954, 962 (7th Cir. 1983) (gender-based distinctions allowing women to serve as guards in male prisons and perform tasks that are not open to men in female prisons serves the important governmental objective of equal job opportunity for women in fields traditionally closed to them). In addition, in facilities with a high percentage of female staff, there could be an insufficient number of male staff to perform pat-down searches on male inmates, given the overwhelmingly male nature of the inmate population.

To be sure, in adopting a one-way ban, the Department does not suggest that male inmates are less likely to have experienced cross-gender sexual abuse while incarcerated than female inmates. In the most recent BJS survey, male inmates were somewhat more likely to report having experienced staff sexual misconduct than female inmates (in prisons, 2.9 percent vs. 2.1 percent; in jails, 2.1 percent vs. 1.5 percent), and were about as likely as female inmates to report that the perpetrator was always of the opposite sex (in prisons, 68.8 percent vs. 71.8 percent; in jails, 64.3 percent vs. 62.6 percent).[27] The Department also acknowledges that the same survey indicated that male inmates were nearly as likely as female inmates to report sexual touching in a pat-down search: 36.3 percent of male inmates who reported sexual touching indicated that it had occurred at least once during a pat-down search, compared to 36.7 percent of the corresponding set of female inmates.[28] However, when evaluating the prevalence of cross-gender sexual abuse of female inmates, this statistic could be misleading in light of the fact that, as noted above, many facilities nationwide—which may well collectively house a majority of all inmates—already prohibit cross-gender pat-down searches of female inmates absent exigent circumstances. Therefore, a large percentage of female inmates are currently not subject to cross-gender pat-down searches as a matter of course. This discrepancy may well explain why male and female inmates are roughly equally likely to report sexual touching in a pat-down search.

The experience of BOP, which has not prohibited cross-gender pat-down searches, is illustrative. As noted above, female inmates lodged 45.6 percent of all allegations of criminal cross-gender sexual abuse committed by BOP staff, even though less than 7 percent of the BOP population was female. Unlike a majority of State correctional agencies, BOP allowed male correctional staff to perform pat-down searches of female inmates, which may explain why BOP experienced a gender imbalance in allegations that was not shared nationwide. Indeed (as also noted above), according to the OIG report, BOP officials believed that pat-down searches were the most common source of allegations of sexual misconduct against male staff members.

The final rule does not include a similar restriction on cross-gender pat-down searches of female detainees in lockups due to the smaller size, limited staffing numbers, lack of data on incidence of sexual abuse in these institutions, and minimal number of comments directed at lockups. In addition, a pat-down search of a lockup detainee is often conducted by the same police officer who performed a similar search of the detainee upon arrest in the field. Therefore, it would be impractical to impose different search rules once the officer and detainee reach the lockup doors. While recognizing that a blanket restriction would be unworkable, the Department encourages lockups to avoid cross-gender pat-down searches of female detainees, to the extent feasible.

Finally, the Department has removed the provision that mandated a specific exemption from cross-gender pat-down searches for inmates who have suffered documented prior cross-gender sexual abuse while incarcerated. The prohibition of cross-gender pat-down searches of female inmates largely obviates the need for this exemption, and the Department concludes that the potential benefits of retaining the exemption only for male inmates are

[26] *See* James J. Stephan, BJS, *Census of State and Federal Correctional Facilities, 2005,* Appendix Table 12 (Oct. 2008); James J. Stephan, BJS, *Census of Jails, 1999,* at 9, 26 (Aug. 2001).

[27] *See* Allen J. Beck and Paige M. Harrison, BJS, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2008–09,* at 12, 24.

[28] *See id.* at 24.

outweighed by the disadvantages noted by commenters.

Comments regarding juvenile cross-gender pat-down searches. Agencies generally agreed with the gender-neutral ban on pat-down searches in juvenile facilities, so long as exceptions were permitted in certain circumstances. One large State expressed significant concern regarding the cost of implementing the part of the ban that prohibits female staff from conducting pat-down searches of male juveniles. Some organizations supported strengthening the standard to limit the exceptions to exigent circumstances only.

Response. The Department concludes that a gender-neutral cross-gender pat-down search ban in juvenile facilities is required to help protect youth from staff sexual misconduct.

The percentage of staff-on-resident victimization that involves female staff and male residents is much higher than the analogous percentage in adult facilities. A recent BJS survey indicated that 92 percent of all youth reporting staff sexual misconduct were males reporting victimization exclusively by female staff, compared to 65 percent in adult prisons and 58 percent in jails.[29] The Department agreed with commenters who recommended allowing such searches only in ''exigent circumstances.'' The Department removed the exception for ''other unforeseen circumstances'' because the phrase is too vague and could lead to excessive reliance on the exception. The Department intends the exception to the cross-gender pat-down search ban to be limited to rare instances where truly emergent conditions exist.

Comments regarding searches of transgender and intersex inmates. A number of advocates urged that transgender and intersex inmates be allowed to state a preference regarding the gender of the staff searching them, or that a presumption be created that transgender or intersex inmates be searched by female staff, because transgender and intersex persons are often perceived as female and are at high risk of being targeted by male staff for sexual violence and harassment. Numerous commenters, including both advocates and agency commenters, requested guidance on this issue.

Many advocates urged the Department to prohibit examinations of transgender and intersex inmates, even by medical professionals, solely to determine genital status. Such examinations can be highly traumatic, commenters asserted, whereas the information regarding genital status can be obtained by questioning the person or by review of medical files. Commenters noted that transgender and intersex juveniles are particularly likely to be traumatized by such examinations.

Response. The Department agrees that guidance is needed on properly searching transgender and intersex inmates. This guidance should be detailed and workable for facilities, should adequately protect transgender and intersex people, and is best provided by the National Resource Center for the Elimination of Prison Rape.

The final standard does not include a provision allowing individual inmates to state a preference for the gender of their searcher, because such requests have the potential to be arbitrary and disruptive to facility administration. Rather, the Department believes that the concerns that prompted such a proposal can be addressed by properly assigning (or re-assigning) transgender and intersex inmates to facilities or housing units that correspond to their gender identity, and not making housing determinations based solely on genital status. Agencies should also recognize that the proper placement of a transgender inmate may not be a one-time decision, but may need to be reevaluated to account for a change in the status of the inmate's gender transition. For example, an inmate who is initially assigned to a male facility or unit may subsequently merit a move to a female facility or unit (or vice versa) following hormone treatment or surgery. Finally, searches of both transgender and intersex inmates at intake, before a housing determination has been made, may present special challenges. In such cases, facilities should make individual assessments of inmates who may be transgender or intersex and consult with the inmate regarding the preferred gender of the staff member who will perform the search.

The final standard does include additional safeguards to protect transgender and intersex inmates from examinations solely to determine genital status. Such targeted examinations will rarely be warranted, as the information can be gathered without the need for a targeted examination of a person's genitals. Accordingly, the final standard states that, if an inmate's genital status is unknown, a facility should attempt to gain the information by speaking with the inmate or by reviewing medical records. In the rare circumstances where a facility remains unable to determine an inmate's genital status, the Department recognizes that the facility may have to conduct a medical examination. Any such medical examination, however, should be conducted as part of a regular medical examination or screening that is required of or offered to all inmates. Transgender and intersex inmates should not be stigmatized by being singled out for specific genital examinations.

Comments regarding privacy. Advocates expressed concern that the standard allowed nonmedical staff of the opposite gender to view inmates as they shower, perform bodily functions, or change clothing, as long as such viewing is incidental to routine cell checks. These commenters feared that this exception would diminish the effectiveness of the Department's intended limitation on cross-gender viewing. Some advocates proposed strengthening this limitation by requiring staff of the opposite gender to announce their presence when entering a housing unit.

Some agency commenters expressed concern that privacy screens would be an unnecessary expense, and others feared that such screens would create blind spots and therefore security risks. Other commenters approved of privacy screens as a cost-effective means of protecting inmates' privacy.

Response. The final standard maintains the exception to the cross-gender viewing prohibition, if the viewing is incidental to routine cell checks. However, the Department has addressed concerns that this exception would lead to widespread cross-gender viewing by adding to the standard a requirement that staff of the opposite gender announce their presence when entering a housing unit.

The Department is sensitive to cost concerns and clarifies that the rule is not intended to mandate the use of privacy screens. Rather, privacy screens may be a safe and cost-effective way to address privacy concerns in certain facilities.

Comments regarding training. Advocates generally supported the inclusion of the requirement to train staff in conducting cross-gender searches. However, some commenters, especially juvenile advocacy commenters, found the requirement confusing because the juvenile standard bans cross-gender searches.

Response. The Department has retained this provision, even for juvenile facilities, due to the likelihood that cross-gender searches of women and juveniles may occur in exigent circumstances.

[29] Beck, BJS, *Sexual Victimization in Juvenile Facilities Reported by Youth, 2008–2009* (Jan. 2010), available at *http://bjs.ojp.usdoj.gov/content/pub/pdf/svjfry09.pdf;* Beck & Harrison, BJS, *Sexual Victimization in Prisons and Jails Reported by Inmates,* 2008–09, at 24.

Comments regarding cross-gender strip searches. Few commenters discussed the prohibition on cross-gender strip searches and body cavity searches. One commenter was concerned that the prohibition, as written, may extend to visual examinations of the mouth and ear, areas that are commonly inspected by members of the opposite sex. Several agency commenters recommended that all strip searches, not just cross-gender strip searches conducted under exigent circumstances, be documented.

Response. The final standard clarifies that a body cavity search refers to a search of the anal or genital opening, and adopts the exigent circumstances language proposed by advocates. The Department declined to revise the standard to require documentation of all strip searches, out of concern that such a requirement could impose a heavy burden on some agencies for no good purpose. The standard aims to ensure documentation of those strip searches that carry the greatest potential for abuse; agencies may, of course, document all strip searches if they so choose.

Inmates with Disabilities and Inmates Who Are Limited English Proficient (§§ 115.16, 115.116, 115.216, 115.316)

Summary of Proposed Rule

The standard contained in the proposed rule (numbered as §§ 115.15, 115.115, 115.215, and 115.315) governed the accommodation of inmates with disabilities and inmates with limited English proficiency (LEP). The proposed standard required that agencies develop methods to ensure that inmates who are LEP, deaf, or disabled can report sexual abuse and sexual harassment to staff directly, and that agencies make accommodations to convey sexual abuse policies orally to inmates with limited reading skills or visual impairments. The proposed standard allowed for the use of inmate interpreters in exigent circumstances.

Changes in Final Rule

The final rule revises this standard to be consistent with the requirements of relevant Federal civil rights laws: Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. 12101, 12131 *et seq.;* Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*

The final standard requires an agency to take appropriate steps to provide inmates with disabilities an equal opportunity to participate in and benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment. An agency is not required to take actions that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity, or in undue financial and administrative burdens, as those terms are used in regulations promulgated under Title II of the ADA. *See* 28 CFR 35.164.

The final standard clarifies that the category of ''inmates with disabilities'' includes, for example, inmates who are deaf or hard of hearing, those who are blind or have low vision, and those with intellectual, psychiatric, or speech disabilities. It specifies that agencies shall provide access to interpreters when necessary to ensure effective communication with inmates who are deaf or hard of hearing, consistent with the ADA and its implementing regulations. The standard clarifies that such interpreters shall be able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

Similarly, with respect to inmates who are LEP, the final standard requires agencies to take reasonable steps to ensure meaningful access to all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment, consistent with the requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.,* and Executive Order 13166 of August 11, 2000, including steps to provide interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

Further, the final standard specifies that an agency cannot rely on inmate interpreters, inmate readers, or other types of inmate assistants ''except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the inmate's safety, the performance of first-response duties under § 115.64, or the investigation of the inmate's allegations.'' The quoted phrase replaces ''exigent circumstances,'' which has been removed in light of the final rule's definition of that term as ''any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of a facility.'' § 115.5.

Note on Intersection With Existing Statutes and Regulations

The Department emphasizes that the requirements in this standard are not intended to relieve agencies of any preexisting obligations imposed by the ADA, the Rehabilitation Act of 1973, or the meaningful access requirements set forth in Title VI of the Civil Rights Act of 1964 and Executive Order 13166. The Department continues to encourage all agencies to refer to the relevant statutes, regulations, and guidance when determining the extent of their obligations.

The ADA requires State and local governments to make their services, programs, and activities accessible to individuals with all types of disabilities. *See* 42 U.S.C. 12132; 28 CFR 35.130, 35.149–35.151. The ADA also requires State and local governments to take appropriate steps to ensure that their communications with individuals with disabilities (including, for example, those who are deaf or hard of hearing, those who are blind or have low vision, and those with intellectual, psychiatric, or speech disabilities) are as effective as their communications with individuals without disabilities. *See* 28 CFR 35.160–35.164. In addition, the ADA requires each State and local government entity to make reasonable modifications to its policies, practices, and procedures when necessary to avoid discrimination against individuals with disabilities, unless the entity can demonstrate that making the modifications would fundamentally alter the nature of the relevant service, program, or activity. *See* 28 CFR 35.130(b)(7). These nondiscrimination obligations apply to all correctional and detention facilities operated by or on behalf of State or local governments. *See Pennsylvania Dep't of Corr.* v. *Yeskey,* 524 U.S. 206, 209–10 (1998).

Similar requirements apply to correctional and detention facilities that are federally conducted or receive Federal financial assistance. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, prohibits discrimination against persons with disabilities by entities that receive Federal financial assistance. Discrimination includes denying persons with disabilities the opportunity accorded others to participate in the program or activity, or denying an equal opportunity to achieve the same benefits that others achieve in the program or activity. *See* 28 CFR 42.503 (implementing Section 504 with respect to recipients of Federal financial assistance from the Department of Justice); 28 CFR 39.160 (implementing Section 504 with respect to programs or activities conducted by the Department of Justice, and providing specifically that auxiliary aids and services be furnished where necessary to afford an equal opportunity to participate).

Pursuant to Title VI of the Civil Rights Act of 1964 and its implementing

regulations, all State and local agencies that receive Federal financial assistance must provide LEP persons with meaningful access to all programs and activities. *See Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency; Policy Guidance,* 65 FR 50123 (2000). Pursuant to Executive Order 13166, each agency providing Federal financial assistance is obligated to draft Title VI guidance regarding LEP persons that is specifically tailored to the agency's recipients of Federal financial assistance. The Department's guidance for its recipients includes a discussion of LEP issues in correctional and detention settings. *See Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,* 67 FR 41455 (2002). For further information, agencies are encouraged to review *Common Language Access Questions, Technical Assistance, and Guidance for Federally Conducted and Federally Assisted Programs* (Aug. 2011), available at *http://www.lep.gov/resources/081511_Language_Access_CAQ_TA_Guidance.pdf.*

In NPRM Question 17, the Department solicited feedback on whether the standards should require facilities to ensure that inmates with disabilities and LEP inmates be able to communicate with staff throughout the entire investigative and response process. The final standard clarifies that an agency must take appropriate steps to ensure equal opportunity to participate in and benefit from all aspects of its efforts to prevent, detect, and respond to sexual abuse and sexual harassment for inmates with disabilities, and take reasonable steps to ensure meaningful access to inmates who are LEP. These requirements are consistent with agencies' obligations under the ADA and related regulations, and provide sufficient protection to individuals with disabilities and individuals who are LEP.

Under the ADA, the nature, length, and complexity of the communication involved, and the context in which the communication takes place, are factors for consideration in determining which ''auxiliary aids and services,'' including interpreters, are necessary for effective communication. The ADA title II regulation lists a variety of auxiliary aids and services, including ''video remote interpreting,'' which may potentially afford effective communication. Under the ADA title II regulation, however, in determining which types of auxiliary aids and services are necessary for effective communication, the public entity is to give primary consideration to the request of individuals with disabilities. *See* 28 CFR 35.160(b)(2); 35.160(b)(2)(d); 35.104 (Definitions—Auxiliary aids and services); Appendix A to Part 35, Guidance to Revisions to ADA Regulation on Nondiscrimination on the Basis of Disability in State and Local Government Services.

Comments and Responses

Comment. The comments in response to the proposed standard were generally positive. Most correctional agency commenters expressed support for the standard as written. Many correctional stakeholders and inmate advocacy groups answered affirmatively to Question 17, but other commenters observed that the ADA already requires facilities to accommodate inmates with disabilities and therefore suggested that additional requirements were unnecessary.

Response. The Department recognizes the importance of ensuring that all inmates, regardless of disability or LEP status, can communicate effectively with staff and are included in each facility's efforts to prevent sexual abuse. The final standard, in conjunction with the ADA, Section 504, Title VI, and Federal regulations protecting the rights of individuals with disabilities and LEP individuals, protects all inmates while providing agencies with discretion over how to provide the requisite information and interpretation services. The final standard does not, nor is intended to, go beyond what is required by the ADA, Section 504, or Title VI, but the standard clarifies the agencies' specific responsibilities with regard to PREA-related matters and individuals who are LEP or who have disabilities.

Comment. One State correctional agency commended the goals of the proposed standard, but expressed concern that ensuring implementation would be difficult due to the vast range of communication issues that might present themselves.

Response. The Department appreciates that a range of communication issues are implicated by this standard. With respect to inmates with disabilities, agencies are encouraged to review the ADA Title II regulations and associated technical assistance materials for more information addressing the broad spectrum of communication needs. *See* 28 CFR 35.160(b)(2); 35.160(b)(2)(d); and 35.104 (Definitions—Auxiliary aids and services); and *The Americans with Disabilities Act, Title II Technical Assistance Manual, Covering State and Local Government Programs and Services* (1993), available at *http://www.ada.gov/taman2.html,* at II—7.0000–II–7.1200. The agency can exercise its discretion regarding how to provide the required information or interpretation for individuals who require additional communication services with regard to PREA-related issues, including by choosing to provide services directly or working with an outside entity to ensure effective communication with inmates with disabilities and meaningful access for LEP inmates.

Comment. Some correctional agency commenters stated that the availability of technology, internet services, and interpreters makes compliance with the standard very reasonable, except in many rural facilities. The commenters further noted that major metropolitan corrections facilities may detain people from 100 different cultures or countries. These commenters requested that the Department offer interpretation services 24 hours a day, rather than placing the burden on each facility individually. Many correctional stakeholders stated that contracting with interpreters can be time-consuming and costly; some requested that agencies be required to comply only to the best of their abilities. On the other hand, several State correctional agencies and local facilities noted that these services are already in place, and as such there will be no additional costs associated with compliance.

Response. Numerous interpretation services are available throughout the country, including telephone and internet providers that can accommodate the needs of small and rural facilities. While the Department cannot provide these services to all agencies, the National Resource Center for the Elimination of Prison Rape can provide technical assistance to help agencies connect with an appropriate provider.[30] Agencies retain the discretion to provide the requisite services in the most appropriate manner for the specific facility and incident. With regard to cost, the Department notes that all prisons and jails are subject to the ADA, and that all State Departments of Corrections and many jails are subject to Title VI due to receipt

[30] Some services may be available free of charge. For example, Video Relay Service (VRS) is a form of Telecommunications Relay Service (TRS) that enables persons with hearing disabilities who use American Sign Language to communicate with voice telephone users through video equipment, rather than through typed text. Like all TRS calls, VRS is free to the caller. VRS providers are compensated for their costs from the Interstate TRS Fund, which the Federal Communications Commission oversees. See *http://www.fcc.gov/guides/video-relay-services.*

of Federal financial assistance. The requirements of this standard are informed by the ADA and Title VI; to the extent entities are in compliance with those requirements, the Department does not anticipate that additional costs will arise.

Comment. Some juvenile justice administrators suggested that the agency document the actions it takes, including notes taken by interpreters. These commenters noted that agencies can keep notes and records of their efforts, but cannot ensure that perfect communication has occurred, even between a victim and investigator speaking the same language. An advocacy group also recommended that the standards require documentation of the agencies' efforts to comply.

Response. The Department encourages agencies to keep accurate documentation of their efforts to implement and comply with all of the PREA standards. Such documentation will facilitate the auditing process and ensure accurate compliance assessments. While an agency cannot ensure error-free communication in all instances, a valid policy that has clearly been implemented to guide investigation protocols with regard to ensuring effective communication for individuals with disabilities and meaningful access for individuals who are LEP should satisfy the requirements of this standard, assuming that the agency keeps accurate documentation.

Comment. Some advocacy groups recommended that the final standard include a requirement to enter into a memorandum of understanding with agencies providing specific assistance for LEP inmates, who may face significant language-related obstacles in navigating facilities' grievance and reporting processes.

Most correctional commenters who addressed this issue stated that the Department should not require agencies to enter into formal agreements with outside entities to provide the required services, but should allow agencies to determine for themselves whether such an agreement would help ensure compliance. Other correctional commenters noted that such agreements could be beneficial and should be encouraged, in order to ensure adequate communication with LEP inmates; a few suggested such agreements, or attempts to enter into them, should be mandated.

Response. The Department recognizes that many facilities would benefit from a formal agreement or memorandum of understanding to ensure that LEP inmates can effectively communicate. Indeed, many State correctional agencies noted that they already have these types of agreements in place. Other facilities provide many communication services in-house or through the agency; some rarely have a need for such services. Given the varying needs of different facilities throughout the country, the Department determined that it is prudent to grant the agencies the discretion to provide the requisite services in the manner most appropriate for the specific facility or incident at issue.

Comment. A State correctional agency criticized the proposed standard for referencing abuse hotlines as a possible method for LEP, deaf, or disabled inmates to report abuse without relying on inmate interpreters. The commenter noted that such a hotline would do little for deaf, hearing impaired, or LEP inmates, and further noted that, in its experience, inmate hotlines prove expensive to operate and generate a large number of unfounded calls.

Response. The final standard no longer references abuse hotlines, and does not require an agency to provide any specific type of interpretation or communication services. Agencies retain the discretion to provide the requisite services in the manner most appropriate for the specific facility or incident at issue, so long as agencies provide effective communication for inmates with disabilities and meaningful access for LEP inmates.

Comment. Many advocacy groups stated that the standards should allow inmate interpreters in adult facilities only in ''exigent circumstances and with the expressed voluntary consent of the inmate victim,'' and should never allow resident interpreters to be used in juvenile facilities. Some agency commenters, by contrast, suggested that inmate interpreters be allowed if the inmate consents.

Response. The final standard requires that agencies not rely on inmate interpreters, readers, or assistants ''except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the inmate's safety, the performance of first-response duties under § 115.64, or the investigation of the inmate's allegations.'' The intent of this provision is to discourage the use of inmate assistance in investigations unless no other option is available in a reasonable timeframe, and where timing is critical to prevent physical harm or to reveal the facts. An inmate's consent to utilizing another inmate as an interpreter does not guarantee the accuracy of the interpretation. While the use of inmate interpreters ordinarily is not an appropriate practice, the Department recognizes that in certain circumstances such use may be unavoidable.

Comment. One State correctional agency recommended removing the term ''sexual harassment'' from this standard, because it would apply to interactions between inmates. The commenter suggested that because staff are trained in sexual violence in correctional settings, and therefore recognize the influence such verbalizations play, instances of inmate-on-inmate sexual harassment are best addressed through each facility's reporting and investigation processes, and should not be subject to additional regulations.

Response. To the extent that incidents are to be reported, as sexual harassment is, inmates must be able to communicate effectively throughout the process, regardless of disability or LEP status.

Comment. The American Jail Association, an association of county wardens, and a local sheriff's department recommended that the Department encourage jails without resources to provide the required services to enter into memoranda of agreement with larger facilities to house victims with disabilities or victims who are LEP.

Response. Given the varying needs of different facilities throughout the country, agencies should be afforded discretion to provide the requisite services in the manner most appropriate for the specific facility or incident at issue. If an agency cannot provide the necessary services to an inmate within its custody, the agency is not precluded from contracting to house such an inmate in another, more appropriate facility. However, agencies should be aware that ADA regulations provide that, ''[u]nless it is appropriate to make an exception, a public entity . . . [s]hall not deprive inmates or detainees with disabilities of visitation with family members by placing them in distant facilities where they would not otherwise be housed.'' 28 CFR 35.152(b)(2)(iv).

Comment. The National Disability Rights Network (NDRN), a nonprofit membership organization consisting of federally mandated Protection and Advocacy (P&A) Systems and Client Assistance Programs (CAP), provided extensive comments suggesting effective methods for agencies to comply with the proposed standards. NDRN noted that the proposed standards did not impose any new burdens or mandates on facilities, but rather reaffirmed the applicability of existing accommodations. In order to meet their legal and constitutional obligations, NDRN stated, confinement facilities

must provide effective communication accommodations when a need for such accommodations is known, based on requests from individual inmates as well as other information sources. NDRN suggested several best practices for communicating with special needs inmates, and recommended adopting ''universal precautions'' for communicating with all inmates, such as using a sixth-grade reading level for written materials intended for adults, and a third-grade reading level for confined juveniles. NDRN suggested, in addition to restricting the use of other inmates as interpreters, that family members and acquaintances should not be used as interpreters, except in emergency situations when no viable alternative option exists, in order to protect the confidentiality, privacy, dignity, and safety of inmates, and to ensure objectivity and fidelity of interpretation. NDRN also noted that each State has a designated Protection & Advocacy office, which can be a resource for facilities on disability issues, including how to provide accessible formats for inmate education and effective communication accommodations during responses to and investigations of sexual abuse or harassment reports.

Response. The Department appreciates the detailed suggestions for best practices included in NDRN's comment and encourages all agencies to consider implementing a variety of strategies to ensure effective communication with all inmates. The National Resource Center for the Elimination of Prison Rape will develop training modules and provide technical assistance to help agencies educate staff concerning communication with inmates who are LEP and inmates who have disabilities. While the Department allows the agencies the discretion to provide the requisite services in the most appropriate manner for the specific facility or incident at issue, the Department encourages agencies to reach out to community providers and State offices as resources. As NDRN notes, each State has a federally mandated Protection & Advocacy office, initially created pursuant to Developmental Disabilities Assistance and Bill of Rights Act of 1975, codified as amended at 42 U.S.C. 15001 *et seq.* These offices can serve as valuable resources in helping facilities comply with the standards and with disability law more generally.

Comment. One State correctional agency recommended that the facilities establish an early identification system as part of the reception process to ''flag'' inmates with disabilities and inmates who are LEP, and then develop a tracking mechanism that ensures the designation follows the inmate throughout his or her incarceration.

Response. In order to ensure proper communication for inmates who have disabilities or are LEP, facilities will need to know which individuals require additional assistance. A formal early identification system, as suggested by the commenter, is a promising method of managing this information. Under the final standards, however, the agencies retain the discretion to develop a system to provide the requisite services in the most appropriate manner for the specific facility or individuals at issue, so long as effective communication for inmates with disabilities and meaningful access for LEP inmates are provided.

Comment. One State correctional agency suggested extra time should be allotted for agencies to come into compliance.

Response. The final standard requires each agency to provide communication and information services that are consistent with the agency's responsibilities pursuant to the ADA and applicable regulations. Agencies may exercise discretion in how to provide such services, but the Department declines to afford additional time to comply with an obligation that, in large part, is already mandated by Federal law.

Comment. A group that advocates for people with mental illness noted that the proposed standard was limited to protecting individuals with sensory disabilities but did not include protections for individuals with psychiatric or intellectual disabilities. The commenter recommended that the Department consider clarifying the proposed standard to ensure that administrators understand that they must provide auxiliary aids and services to inmates with a broader range of disabilities.

Response. The final standard clarifies that agencies must take appropriate steps to ensure equal opportunity to participate in and benefit from all aspects of their efforts to prevent, detect, and respond to sexual abuse and sexual harassment for inmates with disabilities, including those with intellectual or psychiatric disabilities.

Hiring and Promotion Decisions (§§ 115.17, 115.117, 115.217, 115.317)

Summary of Proposed Rule

The standard contained in the proposed rule (numbered as §§ 115.16, 115.116, 115.216, and 115.316) prohibited the hiring of anyone who has engaged in sexual abuse in an institutional setting; who has been convicted of engaging in sexual activity in the community facilitated by force, the threat of force, or coercion; or who has been civilly or administratively adjudicated to have engaged in such activity. The proposed standard also required agencies to perform a criminal background check on new hires and to run checks on current employees at least every five years or have in place a system for otherwise capturing such information for current employees. The proposed standard required agencies to ask about previous misconduct in any applications, interviews, or self-evaluations, and provided that material omissions would be grounds for termination. The proposed standard also provided that, unless prohibited by law, the agency must provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.

Changes in Final Standard

The final standard is largely similar to the proposed standard, but makes several changes. First, the final standard narrows its application to employees who may have contact with inmates, but expands it to include contractors within its scope. Second, the final standard encompasses attempts to engage in improper sexual activity, which is now defined more expansively as sexual activity that is ''facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse.'' Third, the final standard requires agencies to consider any incidents of sexual harassment in making decisions regarding employees and contractors, and to provide information regarding such incidents to possible future institutional employers unless prohibited by law. Fourth, the final standard clarifies that an agency need only ask applicants about their prior abuse history in applications *or* interviews, rather than in both. Fifth, for juvenile facilities, the final standard requires a check of any child abuse registry maintained by the State or locality in which the employee would work.

Comments and Responses

Comment. Several commenters noted that the prohibition of hiring and promoting anyone with a history of sexual abuse may be too burdensome to implement, and may not be necessary for staff who have no contact with inmates.

Response. The final standard exempts staff who do not have contact with inmates, in order to focus agencies' efforts on the relevant set of employees.

Comment. Several commenters noted that contractors were not included in this standard.

Response. The Department agrees that this standard should address contractors who have contact with inmates and has revised it accordingly.

Comment. Several commenters recommended adding convictions or restraining orders for domestic violence offenses to this list of prior actions that would preclude employment.

Response. The Department agrees that agencies should have policies addressing a history of domestic violence in relation to employment and promotions. However, given the wide range of factual circumstances, varied State and local statutory definitions, and the lack of a clear nexus to sexual abuse in correctional settings, the Department has declined to expand the prohibition as suggested. By contrast, the Department has added to the final standard a requirement that the agency check any child abuse registry maintained by the State or locality in which the employee would work. This added requirement is appropriate for applicants to work in juvenile facilities due to the unique nature of these facilities, and the particular need to safeguard this population.

Comment. One commenter noted that sexual abuse can occur in institutional settings other than corrections or detention facilities, and that the standard should clarify that such abuse is covered.

Response. The Department agrees that sexual abuse that occurs in other custodial situations should be included in this standard. Accordingly, the final standard refers to sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other ''institution,'' as that term is defined in the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. 1997 *et seq.* Beyond correctional and pretrial detention facilities, CRIPA defines ''institution'' to include State facilities for persons who are mentally ill, disabled, or retarded, or chronically ill or handicapped; residential care or treatment facilities for juveniles; and facilities that provide skilled nursing, intermediate or long-term care, or custodial or residential care. *See* 42 U.S.C. 1997(1).

Comment. Several commenters recommended that the standard's prohibition on hiring include prior incidents of sexual harassment as well as sexual abuse.

Response. Sexual harassment can include a wide range of behaviors, and incidents are often addressed without criminal, civil, or administrative adjudication, making verification difficult. Therefore, the Department has not revised the standard to include an absolute prohibition on hiring or promotions of persons who have engaged in sexual harassment. The final standard does, however, require that an agency consider any incidents of sexual harassment in determining whether to hire or promote anyone, or to enlist the services of any contractor, who may have contact with inmates. For similar reasons, the Department has also added a requirement that agencies provide other institutional employers with information on substantiated incidents of sexual harassment—the proposed standards referenced only sexual abuse—unless prohibited by law.

Comment. One commenter requested clarification regarding the scope of the ''criminal background check'' referenced in the proposed standard.

Response. At a minimum, agencies should access the standardized criminal records databases maintained and widely used by law enforcement agencies. The final standard clarifies this requirement by referring to a ''criminal background records check.''

Comment. One commenter recommended that the standard require contacting prior institutional employers not only to learn about substantiated allegations of sexual abuse, but also to inquire about resignations during a pending investigation into an allegation of sexual abuse.

Response. The Department agrees with this suggestion, and has incorporated the requirement into the standard.

Comment. Several commenters suggested that criminal background record checks for employees should occur more frequently than once every five years and should be required for promotions as well. Correctional agency commenters, however, expressed concern that increasing criminal background record checks would impose an excessive burden. One commenter suggested that if criminal background record checks are not required to occur more frequently than once every five years, then the final standard should mandate that agencies require staff members to report any incident of sexual abuse that they have committed.

Response. The Department concludes that the proposed standard appropriately balanced the need for criminal background record checks with the concerns regarding the burden of carrying out this requirement. The Department agrees that an affirmative staff reporting requirement would be beneficial, and has revised the standard accordingly.

Upgrades to Facilities and Technologies (§§ 115.18, 115.118, 115.218, 115.318)

Summary of Proposed Rule

The standard contained in the proposed rule (numbered as §§ 115.17, 115.117, 115.217, and 115.317) required agencies to take into account how best to combat sexual abuse when designing or expanding facilities and when installing or updating video monitoring systems or other technology.

Changes in Final Rule

The Department is adopting the regulation as proposed.

Comments and Responses

Comment. One commenter suggested that the regulation should affirmatively prohibit an agency from making any changes that would diminish its ability to protect inmates from sexual abuse.

Response. Improving agency performance in combating sexual abuse should be an important goal when making any physical changes or adopting new technology. However, a change may be offset by an agency intending to use other methods to combat sexual abuse (*e.g.,* a physical change made in conjunction with increased staff supervision). The commenter's concern is further addressed in the requirements in §§ 115.13, 115.113, 115.213, and 115.313 to conduct assessments of physical layout and technology as part of an overall review of supervision and monitoring in conjunction with other contributing factors.

Comment. A commenter requested clarification as to the documentation requirements concerning this regulation.

Response. The regulation does not entail a regular separate reporting requirement, but issues concerning physical layouts and technology should be addressed as appropriate in assessments required under §§ 115.13, 115.113, 115.213, 115.313, and §§ 115.88, 115.188, 115.288, 115.388. Agencies may demonstrate compliance through a variety of means—*e.g.,* through planning meeting minutes, statements of work, design specifications, or contracting documents.

Comment. One commenter would have the regulation require agencies to use video-monitoring as a deterrent to sexual abuse and an aid to prosecutions. Another commenter noted that a

mandate to use video technology would be cost-prohibitive.

Response. As discussed in greater depth in its responses to comments regarding § 115.13, the Department agrees that video technology can be extremely helpful, yet is also sensitive to the cost of mandating such technology.

Evidence Protocol and Forensic Medical Examinations (§§ 115.21, 115.121, 115.221, 115.321)

Summary of Proposed Rule

The standard contained in the proposed rule required agencies responsible for investigating allegations of sexual abuse to adopt an evidence protocol to ensure all usable physical evidence is preserved for administrative or criminal proceedings, based on the Department of Justice's Office on Violence Against Women publication, ''A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents'' (SAFE Protocol), or similarly comprehensive and authoritative protocols published after 2011.

The proposed standard expanded the NPREC's recommendation by requiring access to exams not only in cases of penetration but whenever evidentiarily or medically appropriate. For example, if an inmate alleges that she was strangled in the course of a sexual assault that did not result in penetration, a forensic exam might provide evidence to support (or refute) her contention.

The proposed standard took into account the fact that some agencies are not responsible for investigating alleged sexual abuse within their facilities and that those agencies may not be able to dictate the conduct of investigations conducted by outside entities. In such situations, the proposed standard required the agency to inform the investigating entity about the standard's requirements with the hope that the investigating entity will look to the standard as a best-practices guideline. In addition, the standard applied to any outside State entity or Department of Justice component that investigates such allegations.

In all settings except lockups, the proposed standard required that the agency offer all sexual abuse victims access to a person either inside or outside the facility who can provide support to the victim. Specifically, the proposed standard required that the agency make available to the victim either a victim advocate from a community-based organization that provides services to sexual abuse victims or a ''qualified agency staff member,'' defined as a facility employee who been screened for appropriateness to serve in this role and has received education concerning sexual assault and forensic examination issues in general.

Changes in Final Rule

The final standard instructs facilities to use a Sexual Assault Nurse Examiner (SANE) or Sexual Assault Forensic Examiner (SAFE) where possible to perform the exams. Facilities in areas where there is not a SANE or SAFE available must document their efforts to provide SAFEs or SANEs and then provide other qualified medical professionals.

The final standard specifies the use of a developmentally appropriate protocol where the victim is a prepubescent minor, and clarifies that the protocol used in adult facilities shall be developmentally appropriate for youth, where applicable.

The final standard also recognizes the unique role of rape crisis center advocates in supporting victims throughout the forensic examination and investigatory interviews. Recognizing that many facilities are in rural areas where there may not be a rape crisis center available or where the rape crisis center may lack the resources to assist the facility, the standard requires an agency to document its efforts to secure advocacy services from a rape crisis center. If it fails to obtain such services in spite of reasonable efforts, it may provide either a qualified agency staff member or a qualified community-based organization staff member. Particularly in rural areas, there often are community-based organizations that, while not focused on rape crisis services, may provide similar social services, such as general counseling services or advocacy, counseling, and supportive services to victims of domestic violence. Individuals from these organizations may not have the training and expertise that individuals from a rape crisis center have to serve victims, but in the absence of available rape crisis services, they may still be a useful source of outside support for victims, some of whom may be reluctant to trust agency staff. In the case of community-based organizations or agency staff, the final standard requires that the staff person serving in the support role be screened for appropriateness and receive education concerning sexual assault and forensic examination issues in general. Ideally, the staff person would receive the same training as that required for victim advocates in the State, which is usually a forty-hour training and is offered by many State sexual assault coalitions, usually several times throughout the year and at a reasonable cost. A list of coalitions is available on the Web site of the Department's Office on Violence Against Women at *http://www.ovw.usdoj.gov/statedomestic.htm.*

To the extent the agency itself is not responsible for investigating allegations of sexual abuse, the final standard requires the agency to request that the investigating entity follow the relevant investigatory requirements set out in the standard.

For lockups, the final standard adds a requirement that if the victim is transported to an outside hospital for forensic examinations and that hospital offers advocacy services, the detainee shall be allowed to use the services to the extent available, consistent with security needs.

Comments and Responses

Comment. Many advocacy groups commented that the SAFE Protocol is not appropriate for prepubescent minors.

Response. For this reason, the final standard specifies the use of a protocol that is ''developmentally appropriate for youth'' and based on the National Protocol only ''as appropriate.''

Comment. Some groups recommended specifying in the standard that the protocol for prepubescent minors must include such specific topics as policies and procedures for mandatory reporting, consent to treatment, parental notification, and scope of confidentiality.

Response. The Department recognizes that these topics are important in responding to sexual abuse in all settings. However, the Department believes that knowledge of these topics, which are often governed by State laws, should be a prerequisite for qualification as an examiner rather than a mandatory part of the protocol. Accordingly, the Department has not made this change.

Comment. Many victim advocacy groups recommended that the Department require the use of SANEs or SAFEs because they are best qualified to provide a proper forensic examination. Some specifically recommended a protocol that includes transport to facilities that perform exams through SANEs or SAFEs or a requirement that an agency document its decision whether to transport victims outside or perform the examination internally.

Response. The final standard recognizes that the state of the art in sexual assault forensic examinations is to utilize a specially trained and

certified examiner, such as a SANE or SAFE, to perform the exams. SANEs and SAFEs have specialized training and experience so that they are more sensitive to victim needs, and are highly skilled in the collection of evidence, resulting in more successful prosecutions. Accordingly, the final standard instructs facilities to use SANEs or SAFEs where possible, while recognizing that they may not always be available. The Department does not believe it is necessary to dictate to facilities how to utilize SANEs or SAFEs or to impose additional documentary requirements beyond documenting their efforts to make SANEs or SAFEs available.

Comment. Two other such groups specifically recommended the Sexual Assault Response Team (SART) model for response during the exam as well as the use of SANEs/SAFEs.

Response. As discussed above, the final standard instructs facilities to use SANEs or SAFEs where possible. Although the final standard does not specifically require the SART model for response, § 115.64 requires agencies to follow specific first responder duties to protect the victim and preserve evidence and § 115.65 requires agencies to develop a written institutional plan to coordinate actions taken in response to an incident of sexual abuse among staff first responders, medical and mental health practitioners, investigators, and facility leadership. These standards will help ensure an appropriate response to sexual assault incidents, while preserving agency discretion to coordinate such responses in the manner best suited to the particular situation.

Comment. One inmate commented that the exams should be performed by an outside medical practitioner.

Response. The Department believes that the choice of an internal or outside practitioner is less important than making an effort to obtain the services of a SANE/SAFE and otherwise providing a qualified medical practitioner. Accordingly, the Department does not mandate the use of an outside practitioner.

Comment. One correctional association and one State sheriffs' association expressed concerns about the cost of paying for the exams, particularly for jails that would have to pay an outside entity.

Response. Under the Violence Against Women Act (VAWA) of 1994, as reauthorized in 2006, all States must certify as a condition of certain formula grant funding that victims of sexual assault have access to a forensic medical examination regardless of the decision to cooperate with the criminal justice system and that the State or another governmental entity bears the full out of pocket costs of such exams. *See* 42 U.S.C. 3796gg–4. This certification requirement applies throughout the entire State, including to victims who are incarcerated. All States, pursuant to their receipt of funds through the STOP Violence Against Women formula grant program, are required to cover the costs of the exams, including exams for victims in correctional facilities. The Department encourages States and correctional agencies to work together to craft effective strategies for funding and administering these examinations. A list of the administering agencies for each State for the formula grant funding, which should have information about the payment mechanism, is available on the Department's Web site at *http://www.ovw.usdoj.gov/stop-contactlist.htm.*

Comment. One State correctional agency noted that it is in compliance with the current SAFE Protocol, but that it is a guideline for suggested practices, rather than a list of requirements.

Response. This is the correct understanding of the SAFE Protocol, which is a tool to be used for developing individual protocols. The Department will be soon issuing a companion to the SAFE Protocol that will specifically assist correctional facilities in adapting the SAFE Protocol to their needs.

Comment. One sheriff's office expressed concern that the use of the SAFE Protocol could be a moving target if agencies were required to comply with updates.

Response. As discussed above, the SAFE Protocol is a guideline for best practices, rather than a list of requirements.

Comment. A number of advocacy organizations and inmates expressed concerns with the use of ''qualified staff'' to serve in an advocacy role. Concerns included lack of inmate trust in staff, including fear of staff bias against inmates who are lesbian, gay, bisexual, transgender, or intersex (LGBTI); conflict between security and support roles; lack of sufficient time to spend with the victim; and confidentiality. Specific recommendations included using a qualified staff member only when no rape crisis center is available; documenting efforts to enter into agreements with rape crisis centers; screening staff for appropriateness to serve in the role of a support person, including assessing whether the staff member has a nonjudgmental attitude toward sexual assault victims and LGBTI individuals; ensuring round-the-clock coverage; providing the staff member the full forty hours of training that most rape crisis center advocates are required to receive; and providing the staff member opportunities to debrief experts in the victim advocacy field. Some advocacy groups suggested that it was inconsistent for this standard to allow the use of qualified staff members to perform these functions, given that a separate standard required agencies to attempt to enter into memoranda of understanding with community groups to provide confidential emotional support services related to sexual abuse. These commenters recommended that a ''qualified staff member'' be allowed to serve as a victim advocate only where the agency has not been able to enter into an agreement with a community-based agency to provide such services.

Some correctional agencies supported the decision to allow for a qualified staff person, but others expressed concerns over the cost of training and supervising such staff.

Response. After considering the wide range of comments, the Department has decided to require agencies to attempt to make available a rape crisis center advocate, which the final standard defines as ''an entity that provides intervention and related assistance, such as the services specified in 42 U.S.C. 14043g(b)(2)(C), to victims of sexual assault of all ages.'' [31] The Department is sensitive to concerns that inmate victims may be reluctant to confide in a ''qualified staff member'' from the agency due to real or perceived bias and fear of retaliation. In addition, the Department believes that an advocacy organization that is specifically dedicated to providing assistance to victims of sexual abuse is best suited to address victims' needs. A victim will most benefit from a trained, confidential support person, who can focus on the victim and to whom the

[31] 42 U.S.C. 14043g(b)(2)(C) specifies the following services:

(i) 24-hour hotline services providing crisis intervention services and referral;

(ii) accompaniment and advocacy through medical, criminal justice, and social support systems, including medical facilities, police, and court proceedings;

(iii) crisis intervention, short-term individual and group support services, and comprehensive service coordination and supervision to assist sexual assault victims and family or household members;

(iv) information and referral to assist the sexual assault victim and family or household members;

(v) community-based, linguistically and culturally specific services and support mechanisms, including outreach activities for underserved communities; and

(vi) the development and distribution of materials on issues related to the services described in clauses (i) through (v).

victim will feel safe talking. However, the Department recognizes that a rape crisis center advocate will not always be available, whether due to geographic distance or simply because the local rape crisis center lacks sufficient resources to serve the facility. If so, the agency has the option of using either staff from other community-based agencies or qualified agency staff, as long as such persons have been screened for appropriateness to serve in this role and the agency has documented its attempts to secure services from a rape crisis center. Other ''community-based agencies'' may include any entity—such as faith-based groups, non-profit organizations, or community counseling services—that can provide appropriate victim assistance when a rape crisis center is not available. In addition, although the final standard does not mandate a specific number of training hours, it requires that agencies ensure that the victim advocate has received education concerning sexual assault and forensic examination issues in general. The Department recognizes that these precautions will not allay all concerns regarding use of a person who is not a rape crisis center advocate, but anticipates that these safeguards will help ensure that these options are available as a backstop where such an advocate is truly unavailable. In providing two fallback options, the Department entrusts agencies with discretion to utilize whichever option provides the most effective and timely assistance to the victim.

With regard to training, the Department encourages agencies to draw upon outside expertise. Even in the absence of local rape crisis centers, each State has a State Sexual Assault Coalition, which may be a useful resource in developing screening tools and training. Many coalitions will be able to provide the forty-hour advocate training for a reasonable cost to facility personnel. A list of coalitions is available on the Web site of the Department's Office on Violence Against Women at *http://www.ovw.usdoj.gov/statedomestic.htm.*

Comment. One agency commenter construed the draft standard to require a qualified staff person to be employed by the facility where the incident occurred.

Response. The final standard refers to a ''qualified agency staff member,'' making clear that the staff member need not work at the facility where the incident occurred.

Comment. One commenter suggested that the National Resource Center for the Elimination of Prison Rape make available an approved curriculum to assist individuals in becoming qualified staff members.

Response. The Resource Center will do so.

Comment. Some commenters expressed uncertainty regarding the meaning of the phrase ''during the investigatory process.''

Response. For clarification, this phrase has been changed to ''during investigatory interviews.''

Comment. One correctional agency expressed concern that the standard would hold it responsible for the actions of an outside individual over whom they have no authority.

Response. This concern is misplaced: The agency is not responsible for the actions of the victim advocate—only for making one available to the victim. The Department recommends that agencies enter into an agreement with a rape crisis center that describes the scope of the services and the terms of their relationship.

Comment. One sheriff's office suggested separating this standard into separate components for criminal and administrative investigation.

Response. The Department has not made this change, because the references to investigations in the standard apply to either criminal or administrative investigations. If the agency is responsible for either type of investigation, it would be required to follow this standard. If it is not responsible for any investigations, and the responsible entity is a State agency or Department component, the State entity or Department component would be responsible. If the agency is not responsible for any type of investigation and the responsible entity is not a State agency or Department component—*i.e.,* another local entity is responsible—then the agency would notify the responsible entity of the requirements of this standard.

Comment. Some correctional agencies expressed concern about the requirements in paragraphs (f) and (g) regarding outside entities that investigate sexual assault cases because the agencies do not control such entities.

Response. This standard does not require agencies to exert control over such outside entities. Paragraph (g) separately regulates State agencies that investigate these crimes; paragraph (f) requires only that correctional agencies that do not conduct such investigations notify the entity that does. Other than the obligation to notify, the standard does not require a local agency to take any affirmative steps to ensure the compliance of the other entities.

Comment. One correctional agency requested clarification regarding the provision that this standard applies to any ''State entity'' outside of the correctional agency that is responsible for investigating allegations of sexual abuse in institutional settings.

Response. The reference to ''State entity'' is meant to include any relevant division of the State government, as opposed to local government entities.

Comment. One correctional agency requested clarification regarding the meaning of ''these policies'' referenced in paragraph (f).

Response. The final standard clarifies that this refers back to the requirements of paragraphs (a) through (e).

Comment. Numerous victim advocacy organizations and organizations advocating for the rights of inmates recommended that the proposed standard be revised to require lockups to provide a victim advocate or qualified staff member. These commenters stated that victims in lockups should have the same access to advocates as victims in the other types of facilities.

Response. The Department declines to amend the proposed standard to mandate this requirement for lockups, largely for reasons stated in the NPRM. First, because lockups are leanly staffed, complying with this requirement could well require the hiring of an additional staff person. Second, there is little evidence of a significant amount of sexual abuse in lockups that would warrant such expenditure. Third, lockup inmates are highly transient, and thus, in some cases, victims of sexual abuse already will have been transferred to a jail before the forensic exam can be conducted.

Because lockups do not have on-site medical services, a victim would be taken to the hospital for exams. In § 115.121(d), the final standard includes language specifying that, after reaching the hospital, such victims must have the same access to advocates as other victims, barring any security risks.

Comment. NPRM Question 18 asked whether the standards adequately provide support for victims of sexual abuse in lockups upon transfer to other facilities, and if not, how the standards should be modified. The majority of correctional organizations were satisfied that the standards addressed the needs of victims in lockups. Additional comments are discussed below.

Comment. One State correctional agency noted that some tribes use lockups for longer-term court orders, which may raise additional concerns.

Response. Except to the extent that tribes contract with State or local facilities to house non-tribal inmates,

this rule does not apply to tribal facilities. With regard to confinement facilities in Indian country, BIA, like other Federal agencies whose operations involve confinement facilities, will work with the Attorney General to issue rules or procedures that will satisfy the requirements of PREA.

Comment. Some correctional organizations recommended that the standard specify that the processing of the inmate to a larger facility should be expedited in order to ensure access to the services available at the larger facility.

Response. While the Department certainly supports this goal, such expedited treatment may not always be feasible—and should not be attempted if doing so delays the provision of medical care at hospitals or other offsite treatment centers.

Comment. One State expressed the view that a lockup should be responsible for aiding a detainee who is victimized in the lockup, even if the victim has been subsequently transferred to another facility.

Response. As a practical matter, it is not feasible to require a lockup to provide support to a victim who is confined elsewhere. To the extent the concern is over who pays for the victim's care, it is best left to the individual States and localities to determine whether and how to require a shifting of costs.

Policies To Ensure Referrals of Allegations for Investigations (§§ 115.22, 115.122, 115.222, 115.322)[32]

Summary of Proposed Rule

The standard contained in the proposed rule (numbered as §§ 115.23, 115.123, 115.223, and 115.323) mandated that each agency have in place a policy to ensure that allegations of sexual abuse or sexual harassment are investigated by an agency with the legal authority to conduct criminal investigations. The standard mandated that the policy be published on the agency's Web site, or otherwise made available, and, if a separate entity is responsible for investigating criminal investigations, that the publication delineate the responsibilities of the agency and the investigating entity. The standard also required that that any State entity or Department of Justice component that conducts such investigations have in place policies governing the conduct of such investigations.

Changes in Final Rule

The final standard contains no substantive changes, although it adds language that makes explicit what was implicit in the proposed standard: ''The agency shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment.''

Comments and Responses

Comment. Some commenters recommended that the Department restore the NPREC's recommendations that agencies attempt to enter into memoranda of understanding with outside investigative agencies and with prosecutorial agencies.

Response. The Department recognizes that such memoranda of understanding have benefited certain agencies, and encourages agencies to explore the viability of attempting to enter into such agreements. However, due to burden concerns, the Department does not believe that the standard should require agencies to make such efforts. In comments submitted in response to the ANPRM, a number of agency commenters expressed concern that a standard requiring agencies to enter into memoranda, as the NPREC had recommended, would impose significant burdens, especially in State systems where investigations and prosecutions are conducted by numerous different agencies at the county or municipal level. In light of these concerns, the Department declines to revise the standard to mandate attempts to enter into such memoranda.

Comment. A few agencies commented that the requirement to ensure completion of an investigation is duplicative because many agencies already require the investigation of any crime that occurs.

Response. To the extent that an agency has such a policy, the requirement should not require extra effort to implement.

Comment. Some agency commenters expressed concern that the standard required allegations of sexual harassment to be forwarded on to an outside agency to conduct criminal investigations even if the allegation does not rise to the level of criminal conduct.

Response. This concern is misplaced. As stated in paragraph (b) of the relevant sections, there is no need to refer an investigation to an outside criminal investigation agency if the allegation does not involve potentially criminal behavior.

Comment. One commenter asserted that local agencies must be allowed to promptly address sexual harassment complaints and not send complaints to outside agencies.

Response. As noted above, agencies need not refer an investigation to an outside criminal investigation agency if the allegation does not involve potentially criminal behavior. And even if criminal behavior is alleged, the agency may still take administrative action during the pendency of a criminal investigation.

Comment. Some agency commenters objected to the requirement that agency Web sites describe the responsibilities of both the confining agency and (where different) the agency investigating allegations of abuse. A small number of such commenters noted that they did not have a Web site and lacked the resources or support to develop one, and some asked if the policy must be presented in full.

Response. The final standard allows agencies without a Web site to make the information available by other means, which should facilitate full publication of the policy.

Comment. A few agencies objected that it was outside their agency's authority to publish any information describing the responsibilities of another agency.

Response. The Department does not agree with the assertion that an agency lacks the authority to explain what responsibilities it bears, and what investigatory responsibilities will be carried out by an outside agency.

Comment. A commenter recommended revising the standard from ''[t]he agency shall have in place a policy to ensure that allegations of sexual abuse * * * are investigated by an agency with the legal authority to conduct criminal investigations'' to ''[t]he agency shall have in place a policy to ensure that allegations of sexual abuse * * * are *referred to* an agency with the legal authority to conduct criminal investigations.''

Response. The Department has adopted this change, and § 115.22(b) now requires agencies to have a policy to ensure that allegations are ''referred for'' investigation by an agency with the legal authority to conduct criminal investigations.

Comment. Some agencies expressed concern that they would be responsible for monitoring the compliance of an outside entity's investigation, noting that they did not typically have control over the manner in which law enforcement conducts investigations.

Response. As the amended text makes clear, agencies are responsible only for

[32] The standard numbered in the proposed rule as §§ 115.22, 115.222, and 115.322, titled ''Agreements with outside public entities and community service providers,'' has been deleted and its contents, as modified, have been moved to §§ 115.51, 115.53, 115.251, 115.253, 115.351, and 115.353.

referring the investigation to the outside entity, not for monitoring the outside entity's investigation.

Comment. One State correctional agency commented that proposed standard § 115.23(a) would be impossible to implement because criminal investigation entities in its State lack sufficient funding to take on the volume of investigations. The commenter asserted that it would be impossible to divide investigations between law enforcement and the correctional agency at the beginning of a case because it is often difficult to predict, at the outset of an investigation, whether evidence of criminal behavior will be obtained. Another agency commenter objected to the requirement that it determine whether behavior was ''potentially criminal'' because, in its view, such a determination can be made only by prosecutors and courts.

Response. As the amended standard makes clear, a correctional agency's sole responsibility is to refer allegations of potentially criminal behavior to entities with the authority to investigate criminal matters. An agency need not definitively determine whether behavior is actually criminal; it need only refer allegations of *potentially* criminal behavior to the appropriate law enforcement agency. The Department is confident that the ability to determine whether an allegation might involve criminal acts is well within the competence of agency officials.

Comment. A private individual recommended that criminal investigations be conducted by outside agencies, and that inmates have the opportunity to appeal the results of these investigations.

Response. The standard requires agencies to refer investigations regarding potentially criminal behavior involving sexual abuse or sexual harassment to an agency with the legal authority to conduct criminal investigations. State or local law may dictate which entity has the legal authority to conduct such investigations, and it would not be appropriate for the standards to require that an outside jurisdiction conduct such investigations. With regard to criminal investigations, alleged victims of crimes do not ordinarily have the right to appeal the results of criminal investigations, and the Department declines to revise the standard to mandate such a right here.

Comment. A number of advocates noted that delay can result where multiple investigations are not well coordinated, and recommended requiring that facilities establish clear responsibilities when overlapping investigations occur, so that staff members understand their roles and how to collaborate with other agencies to ensure timely resolution of all investigations. Specifically, they recommended adding the following language to the standard: ''The agency shall coordinate internal investigations of alleged sexual abuse and sexual harassment with any external investigations by law enforcement, child protective services, or other entities charged with investigating alleged abuse. The agency shall establish an understanding between investigative bodies with overlapping responsibilities so that staff have a clear understanding of their roles in evidence collection, interviewing, taking statements, preserving crime scenes, and other investigative responsibilities that require clarification.''

Response. The Department recognizes the importance of coordinating investigations. However, the Department concludes that details of how to coordinate investigative efforts most effectively are best left to the agencies involved, and do not warrant specific reference within the standards.

Comment. One stakeholder suggested removing sexual harassment from the ambit of this standard, while a number of other commentators suggested adding sexual harassment to sections of the proposed standards that referenced only sexual abuse.

Response. Although PREA does not reference sexual harassment, it authorizes the NPREC, and by extension the Attorney General, to propose standards relating to ''such other matters as may reasonably be related to the detection, prevention, reduction, and punishment of prison rape.'' 42 U.S.C. 15606(e)(2)(M). Referencing sexual harassment in certain standards is appropriate to combat what may be a precursor to sexual abuse. Upon reconsideration, the Department has added sexual harassment to the portions of the standard that reference policies of State entities and Department of Justice components, in order that these provisions parallel the remainder of the standard.

Comment. Two agencies expressed uncertainty as to the meaning of ''State entity'' in the proposed standard, and suggested adding a specific definition.

Response. The reference to ''State entity'' is meant to refer to any division of the State government, as opposed to local government. The Department does not believe that a definition is necessary.

Employee Training (§§ 115.31, 115.131, 115.231, 115.331)

Summary of Proposed Rule

The standard contained in the proposed rule required that all employees who have contact with inmates receive training concerning sexual abuse in facilities, including specified topics, with refresher training to be provided on an annual basis thereafter. The proposed standard included all training topics proposed by the NPREC, and added requirements that training be provided on how to avoid inappropriate relationships with inmates, that training be tailored to the gender of the inmates at employees' facilities, that training cover effective and professional communication with LGBTI residents, and that training in juvenile facilities be tailored to the juvenile setting.

The proposed standard required that agencies document that employees understand the training they have received, and that all current employees be trained within one year of the effective date of the PREA standards.

In lockups, the proposed standard, consistent with the NPREC's corresponding standard, did not specify training requirements beyond requiring that the agency train all employees and volunteers who may have contact with lockup detainees to be able to fulfill their responsibilities under agency sexual abuse prevention, detection, and response policies and procedures, and to communicate effectively and professionally with all detainees.

Changes in Final Rule

The Department has added language in §§ 115.31(a)(10), 115.131(a)(6), and 115.231(a)(10), and made conforming changes to § 115.331(a)(10), to require relevant staff training in all facilities on laws related to the mandatory reporting of sexual abuse to outside authorities.

The final standard adds sexual harassment to paragraphs (a)(2), (a)(4), (a)(5), and (a)(6), which previously referenced only sexual abuse, and adds ''gender nonconforming inmates'' to paragraph (a)(9), which previously referenced only LGBTI inmates.

In an effort to reduce the costs associated with providing training, the Department has reduced the required frequency of staff ''refresher training'' from annual to every two years, while adding a requirement that ''refresher information'' be provided to staff in the years in which they do not receive training.

Comments and Responses

Comment. Most agency commenters responded positively to the staff training standards, with some stating that that they were already in compliance. A number of agency commenters identified concerns with the cost of development and the frequency of required training. Other commenters expressed concern specifically with regard to the costs associated with providing training on effective communication with LGBTI inmates.

Response. The Department's National Resource Center for the Elimination of Prison Rape intends to develop training tools for use by all types of correctional agencies. Therefore, costs for training development should not be burdensome, and agencies should be able to integrate this training into their training protocols in a cost-effective manner. In response to comments regarding the frequency of refresher training, the Department modified the requirement so that agencies need provide such training only every two years, which will reduce the cost of such training. However, the Department notes that such refresher training is quite valuable: In addition to helping ensure that staff know their responsibilities and agency policies, the periodic repetition of this training will foster the development of an agency and facility culture that prioritizes efforts to combat sexual abuse.

Comment. Advocate and former inmate commenters requested increased and specific training for staff on effective and professional communication with all inmates, and specifically with LGBTI and gender nonconforming inmates.

Response. The final standard requires staff to receive training in effective and professional training with inmates in general, and specifically with respect to LGBTI and gender nonconforming inmates. The Department does not believe that the standard itself need provide greater detail regarding the precise contours of such training. Rather, the Department expects that agencies will learn from each other and will adapt the Resource Center's training materials as needed.

Comment. Some commenters recommended that the standard require training of all employees rather than, as in the proposed standard, only employees who may have contact with inmates.

Response. While agencies are free to train all employees, the Department reaffirms its determination that it would not be appropriate for the standard to require agencies to train employees who have no documentable inmate contact.

Comment. Some commenters requested that training be expanded to include sexual harassment in addition to sexual abuse.

Response. The Department has added sexual harassment to certain training requirements, where particularly relevant. Specifically, the final standard requires training on inmates' right to be free from retaliation for reporting sexual harassment, the dynamics of sexual harassment in confinement, and the common reactions of sexual abuse and sexual harassment victims. Adding sexual harassment to these training categories, which in the proposed standard referenced only sexual abuse, is unlikely to increase costs and may help combat what is often a precursor to sexual abuse.

Comment. An advocate commenter recommended that staff receive training on how histories of sexual abuse and domestic violence affect women. Additionally, one agency commenter suggested that all training should be ''gender informed.'' Various other commenters expressed concern that gender-specific training would be interpreted to mean that training should be tailored solely to the gender of the inmates in the employee's current work assignment, which these commenters stated could be problematic if the employee is later reassigned. Instead, they requested that all staff be trained on the gender-specific needs of both genders with regard to sexual abuse.

Response. The proposed standard already mandated training on these topics, by requiring training on the dynamics of sexual abuse in confinement and the common reactions of sexual abuse victims, and by requiring that training be tailored to the gender of the inmates at the employee's facility. The final standard retains these requirements, and clarifies the last provision by requiring that staff transferring between gender-specific facilities receive gender-appropriate training. Requiring gender-specific training is unlikely to complicate employee transfers; it should not prove burdensome for an employee transferring from a male facility to a female facility, or vice versa, to undergo a training module related to the needs of the population at the staff member's new facility.

Comment. Some advocate commenters recommended that agencies be required to use the incident review process to make adjustments to training curriculums.

Response. While the Department agrees that incident reviews may be instructive as to training needs, it does not believe it is necessary to mandate such a connection. Instead, the Department leaves the issue to the discretion of agency officials.

Comment. A rape crisis center recommended that agencies partner with local rape crisis centers to provide the most current training materials regarding sexual abuse.

Response. The Department encourages such linkages, but declines to mandate them. Such a mandate could be difficult for certain agencies to comply with, depending upon the availability and interest of local rape crisis centers.

Comment. Several advocacy groups proposed requiring that staff be trained in State mandatory reporting laws.

Response. The Department agrees, and has added a requirement in §§ 115.31(a)(10), 115.131(a), and 115.231(a)(10) that staff be trained in how to comply with relevant laws relating to mandatory reporting of sexual abuse to outside authorities. The Department has modified the analogous requirement under § 115.331(a)(10) for consistency. Jurisdictions must determine their responsibilities under applicable laws and train staff accordingly.

Comment. Many commenters expressed concern that the proposed standard for lockups specified a smaller set of training topics than the proposed standards for other categories of facilities.

Response. The final standard expands the training requirements for lockups, adding requirements that training be provided on the agency's zero-tolerance policy; detainees' right to be free from sexual abuse and sexual harassment; the dynamics of sexual abuse and harassment in confinement settings, including which detainees are most vulnerable in lockup settings; the right of detainees and employees to be free from retaliation for reporting sexual abuse or harassment; how to detect and respond to signs of threatened and actual abuse; and how to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.

Comment. Juvenile justice agencies and juvenile advocacy groups recommended that the final standard require staff training specific to age of consent laws and how to distinguish between consensual and abusive sexual contact between residents.

Response. The Department recognizes that juveniles may have sexual development issues that are distinct from adult behaviors. Accordingly, the final standard includes these training

topics in § 115.331(a)(7) and (11). Juvenile facilities will need to identify applicable State laws regarding age of consent and train staff accordingly.

Comment. A significant number of commenters requested the inclusion of staff training in adolescent development, behavioral manifestations of trauma, the particular needs and vulnerabilities of juveniles, sexual health, sexual development, healthy staff-youth relationships, and other topics.

Response. Many of these topics are covered in the final standard, which requires training on, among other topics, the dynamics of sexual abuse and sexual harassment in juvenile facilities, the common reactions of juvenile victims of sexual abuse and sexual harassment, how to detect and respond to signs of threatened and actual sexual abuse and how to distinguish between consensual sexual contact and sexual abuse between residents, and how to avoid inappropriate relationships with residents. While staff may benefit from training on sexual health and sexual development, such training is not essential to combating sexual abuse in juvenile facilities.

Comment. Some commenters recommended that the agencies be required to train all employees within one year, rather than 90 days, upon enactment of the final standards.

Response. The Department believes that one year is a suitable amount of time, in consideration of the wide variety in facility sizes, population, and resources.

Comment. Some commenters criticized the Department for not including the NPREC's recommended supplemental immigration standard ID–2, which would require additional training for employees at facilities that hold immigration detainees. These commenters requested that the final standards require specific training regarding cultural sensitivity and issues unique to immigration detainees.

Response. The Department recognizes that State and local facilities often confine very diverse populations, as do BOP facilities, even if they do not hold immigration detainees. The Department believes that the final standard requires training that is appropriate and responsive to this diversity. By mandating that agencies train their employees, for example, on how to detect and respond to signs of threatened and actual sexual abuse and to communicate effectively and professionally with inmates, the standard implicitly contemplates training to account for any relevant linguistic, ethnic, or cultural differences. Because the requirement is broad and inclusive, the Department concludes that it is not necessary to require additional training regarding cultural sensitivity to particular populations. Instead, the Department leaves the issue to the discretion of agency officials.

Volunteer and Contractor Training (§§ 115.32, 115.132, 115.232, 115.332)

Summary of Proposed Rule

The standard contained in the proposed rule mandated that all volunteers and contractors who have contact with inmates be trained on their responsibilities under the agency's sexual abuse and prevention, detection, and response policies and procedures, in recognition of the fact that contractors and volunteers often interact with inmates on a regular, sometimes daily, basis. The level and type of training provided to volunteers and contractors would be based on the services they provide and level of contact they have with inmates; at the very least, all volunteers and contractors who have contact with inmates would be notified of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report such incidents.

With regard to lockups, the proposed standards mandated, in § 115.132, that attorneys, contractors, and any inmates who work in the lockup must be informed of the agency's zero-tolerance policy regarding sexual abuse. (As noted above, § 115.131 governs training of lockup volunteers.)

Changes in Final Rule

The final standard adds sexual harassment to the scope of training for volunteers and contractors. For lockups, the final standard removes attorneys from the scope of persons to be notified of the agency's zero-tolerance policy. The proposed standard did not require such notification of attorneys in any other type of facility, and upon reconsideration the Department concludes that the purposes of notification are not served by requiring notification of attorneys in lockups.

Comments and Responses

Comment. Commenters supported training for volunteers; some requested greater specificity in the categories of training required.

Response. The Department believes that the training categories included in the final standard are sufficient for agencies to identify training as appropriate for each type of volunteer.

Inmate Education (§§ 115.33, 115.233, 115.333)

Summary of Proposed Rule

The proposed standard required that information about combating sexual abuse be provided to individuals in custody upon intake and that comprehensive education be provided within 30 days of intake in person or through video. In addition, the proposed standard required that agencies ensure that key information is continually and readily available or visible to inmates through posters, inmate handbooks, or other written formats. The proposed standard required annual refresher information, except for community confinement facilities, which were required to provide refresher information only when a resident is transferred to a different facility.

Changes in Final Rule

The final standard replaces the requirement that inmates receive annual refresher information with a requirement that inmates receive additional education upon transfer to a different facility to the extent that the policies and procedures of the inmate's new facility differ from those of the previous facility. In addition, juvenile facilities are now required to provide comprehensive education within 10 days of intake, rather than 30 days, which remains the timeframe for other facilities.

Comments and Responses

Comment. Jail agency commenters were most critical of the requirement for inmate education, indicating that the training of a population with rapid turnover was difficult to deliver and document. Jail agency commenters also criticized the requirement to provide inmate education during the intake process; some noted that jail booking processes were not equivalent to intake in prisons, because jail inmates are more likely to be suffering from increased stress, to be less stable emotionally, and to be under the influence of drugs or alcohol at the time of intake. These commenters also remarked that smaller jails are not equipped to provide inmate education.

Response. The Department recognizes that jails have a unique population and rapid turnover rate. The final standard clarifies that information can be provided at intake through a handout or other written material. The documentation requirement has not been changed, as this can be easily added to an intake/admission checklist or other form of documentation. Indeed,

several agency commenters, including jails, stated that they already do so.

Comment. Agency commenters criticized the yearly refresher requirement as unwieldy, citing the difficulty of delivery, documentation, and tracking of this activity.

Response. The Department has removed the annual refresher requirement, substituting language requiring that inmates receive education upon transfer between facilities to the extent that the policies and procedures differ. This revision is better tailored to the goal of ensuring that inmates are always aware of relevant procedures, consistent with the requirement in § 115.33(f) that agencies ensure that key information is continuously and readily available or visible to inmates through posters, inmate handbooks, or other written formats.

Comment. One former inmate stated that inmates do not take video education seriously. The commenter recommended that inmate training be tailored to the type of inmate, including separate trainings for first-time inmates, who may need more information than is currently provided.

Response. The Department encourages agencies to offer in-person education and tailored trainings to the extent that resources allow, but concludes that the standard need not mandate either in order to serve the purpose of educating inmates. The National Resource Center for the Elimination of Prison Rape intends to develop training tools for use by all types of correctional agencies and may be able to provide such tailoring.

Comment. Juvenile justice advocates criticized as too long the 30-day timeframe in § 115.333(b) for providing comprehensive education regarding sexual abuse and harassment in juvenile facilities.

Response. The Department agrees, and has shortened the timeframe for comprehensive education in juvenile facilities to ''within 10 days of intake.'' The Department notes that § 115.333(a) separately requires that residents receive information upon intake explaining the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment.

Comment. Some commenters requested inclusion of a lengthy list of additional topics for juveniles, such as basic sexual education, sexual anatomy, sexual orientation, and gender roles.

Response. While juvenile residents may benefit from learning about such topics, these topics appear to be better suited for inclusion in a facility's school curriculum rather than in a set of mandated topics aimed at combating sexual abuse.

Comment. Some advocate commenters requested that the Department mandate ''peer-to-peer education'' for inmates.

Response. The Department recognizes that some correctional systems, including the California Department of Corrections and Rehabilitation, have instituted pilot peer-to-peer education programs. While the Department encourages further development of such programs, it believes that at this point in time the nationwide imposition of such a requirement would be too resource-intensive.

Comment. Some commenters proposed that the Department include the NPREC's recommended supplemental immigration standard ID–3, which would require that education regarding sexual abuse be culturally appropriate and given to immigration detainees separately from information regarding their immigration cases.

Response. The Department believes that the final standard is sufficient to address concerns that immigration detainees in State, local, and BOP facilities receive meaningful education regarding combating sexual abuse. The final standard requires that education be accessible to all inmates, including those who do not speak English, and that educational materials be continuously and readily available to inmates regardless of their immigration status. The Department believes that facilities need not be required to tailor such education to the culture of the detainees, or deliver it separately from case-related information, in order to ensure that it is meaningful.

Comment. Several commenters suggested that agencies be required to distribute an ICE Detainee Handbook, as recommended by the NPREC in its supplemental immigration standard ID–4.

Response. The final rule does not include this change. The NPREC recommended that the handbook include information regarding the agency's sexual abuse policies, as well as information regarding how to contact community services organizations, consular officials, and DHS officials. These issues are already addressed in this standard as well as in the final standards on Inmate Reporting (§§ 115.51, 115.151, 115.251, 115.351) and Access to Outside Confidential Support Services (§§ 115.53, 115.253, 115.353), which collectively provide appropriate guidance to State, local, and BOP facilities that hold immigration detainees.

Specialized Training: Investigations (§§ 115.34, 115.134, 115.234, 115.334)

Summary of Proposed Rule

The proposed standard required that agencies that conduct their own sexual abuse investigations provide specialized training for their investigators in conducting such investigations in confinement settings, in addition to the general training required for all employees, and that any State entity or Department of Justice component that investigates sexual abuse in confinement settings do the same.

Changes in Final Rule

No changes have been made.

Comments and Responses

Comment. Advocate commenters generally supported revising the standard to require training on distinguishing between abusive and consensual sexual contact. Some advocates identified this training as essential to determining whether what may appear to be consensual activity is in fact coercive, while others expressed an opposite concern: That too many incidents would be considered abusive unless investigators were properly trained.

Response. While not specifically mentioned, this topic should be considered part of the relevant training in conducting sexual abuse investigations in confinement settings as mandated by § 115.34(a). The same paragraph requires that investigators receive the general training provided to all inmates pursuant to § 115.31, which includes training on the dynamics of sexual abuse in confinement. Additionally, with regard to juvenile facilities, § 115.331 specifically mandates training in how to distinguish between consensual sexual contact and sexual abuse between residents.

The question of whether sexual contact was consensual is a threshold determination in investigating any allegation of sexual abuse between inmates. The investigator is unlikely to have observed direct contact between the victim and alleged abuser, but will need to make this determination based on interviews and the evidence collected. The final standard requires investigators to have specialized training in conducting sexual abuse investigations in confinement settings, including training on techniques for interviewing sexual abuse victims and the evidence required to substantiate a case. Such training will help enable investigators to assess whether sexual contact was abusive. The National Resource Center for the Elimination of

Prison Rape will develop training modules that will assist the provision of such specialized training to investigators.

Comment. Advocate commenters also requested a requirement that investigators receive specialized instruction in accessing LEP resources.

Response. Sections 115.16, 115.116, 115.216 and 115.316 address LEP inmates and, as revised, require equal access to all aspects of efforts to prevent, detect, and respond to sexual abuse and sexual harassment for inmates who are LEP. The Department has not specified within individual standards how agencies are to implement this standard, preferring to leave it to agency discretion.

Specialized Training: Medical and Mental Health Care (§§ 115.35, 115.235, 115.335)

Summary of Proposed Rule

The standard contained in the proposed rule required specialized training, and documentation thereof, for all medical staff employed by the agency or facility. The standard exempted lockups, which usually do not employ or contract for medical staff. The proposed standard also required that any agency medical staff who conduct forensic evaluations receive appropriate training.

Changes in Final Rule

The final standard clarifies that medical and mental health care practitioners shall also receive the training mandated for employees under § 115.31 or for contractors and volunteers under § 115.32, depending upon the practitioner's status at the agency. The final standard also adds a requirement that medical staff receive training in how to detect, respond to, and report sexual harassment.

Comments and Responses

Comment. Many comments regarding paragraph (b) of the proposed standard, which required that any agency medical staff who conduct forensic evaluations receive appropriate training, appeared to misunderstand the intent of this requirement. Agency commenters expressed concern about the potential expense of providing advanced forensic training, whereas advocate commenters criticized the notion that agency medical staff would conduct forensic examinations, and seemed to assume that any training provided to them would be inadequate.

Response. Paragraph (b) is meant to direct agencies to obtain appropriate and proper training for in-house medical staff if they decide to perform forensic examinations on-site. This direction is not intended to encourage agencies to create in-house forensic programs, but rather to call attention to the specialized training required to perform adequate examinations. The Department recommends that on-site medical staff conducting forensic examinations meet or exceed the training guidelines found in the Department's National Training Standards for Sexual Assault Medical Forensic Examiners.

Comment. Advocate commenters suggested that medical and mental health care practitioners should receive the same training as all other staff.

Response. The Department agrees, and has added language accordingly.

Comment. One agency commenter stated that specialized training for medical and mental health contractors would be costly and burdensome.

Response. The Department does not find this comment persuasive. Many medical and mental health contractors will already have such training, in which case the agency need not supplement it (beyond the standard training for staff and contractors). To the extent medical and mental health contractors do not have such training, it is essential that they receive it. The National Resource Center for the Elimination of Prison Rape is able to develop training modules that will assist the provision of such training.

Screening for Risk of Sexual Victimization and Abusiveness (§§ 115.41, 115.141 115.241, 115.341)

Summary of Proposed Rule

The standard contained in the proposed rule required that prisons, jails, and community confinement facilities screen inmates during intake and during an initial classification process for risk of being sexually abused by other inmates or being sexually abusive toward other inmates. The standard required that such screening be conducted using an objective screening instrument, taking into account a list of enumerated factors, and mandated that blank copies of the screening instrument be made available to the public upon request,

The proposed standard further required that the screening be conducted within 30 days of intake, and required re-screening when warranted. The standard prohibited discipline of inmates who refuse to answer specific questions during the screening process, and required protection of sensitive inmate information.

With regard to juveniles, the proposed standard did not include a timeframe, except to state that the facility should attempt to ascertain such information during intake and periodically throughout the resident's confinement.

The proposed standard did not include a screening requirement for lockups.

Changes in Final Rule

Rather than require a screening during intake and again during an initial classification process, the final standard requires an initial intake screening to occur ordinarily within 72 hours of intake in prisons, jails, and community confinement facilities, and requires that the facility reassess the inmate's risk of victimization or abusiveness within a set time period, not to exceed 30 days from the inmate's arrival at the facility, based upon any additional, relevant information received by the facility subsequent to the intake screening. For juvenile facilities, the standard requires the initial screening to occur within 72 hours.

In the list of factors to consider, the requirement to assess whether the inmate is LGBTI has been revised by adding consideration of whether the inmate would be perceived to be so, and whether the inmate is or would be perceived to be ''gender nonconforming,'' which is defined in § 115.5 as ''a person whose appearance or manner does not conform to traditional societal gender expectations.''

The final standard eliminates the requirement that a facility's screening instrument be made publicly available, and clarifies that the prohibition on disciplining inmates who refuse to answer screening questions applies only to specific sensitive questions required by the standard.

For lockups, the final standard adds an abbreviated risk screening process for facilities that do not hold detainees overnight, and a more extensive risk screening process for detainees in lockups that do hold inmates overnight.

Comments and Responses

Comment. Advocates and correctional agencies alike expressed concern over the requirement in the proposed standard that the initial classification occur within 30 days of the inmate's confinement. Advocates feared that allowing facilities up to 30 days to complete an initial classification would place many inmates at unnecessarily high risk of abuse for an extended period of time. Advocates preferred that information be gathered during the intake process to the extent possible,

and expressed the view that much of the required information should be readily available.

Agency commenters expressed the concern slightly differently, noting that a large percentage of jail inmates are released within 30 days, and thus 30 days was too long to allow an inmate to wait until an initial classification. Some jail commenters, including the American Jail Association, also expressed concern about conducting screening at intake, when inmates are often under the influence or under great stress. In addition, these commenters stated that a high percentage of those arrested are released directly from the ''booking floor'' and suggested that a jail intake screening should look similar to those conducted at lockup facilities until a determination has been made that the arrestee will not be released. The National Sheriffs Association, plus several State sheriffs' associations, commented that the standard in the proposed rule would be difficult to implement in a jail. Several commenters suggested that jail booking operations are more similar to processes in lockup facilities than to prison intake.

Response. Upon reconsideration, including a review of comments submitted in response to NPRM Question 22, which asked whether the final rule should provide greater guidance regarding the required scope of the intake screening, the Department has decided to make significant changes to this standard.

In order to protect all inmates regardless of when they arrive at a facility or where they are located within the facility, at least minimal information must be collected quickly to inform decisions about where the arrestee should be held awaiting the intake procedure and where he or she will be housed initially.

The Department recognizes that some jail inmates spend limited time in the booking area, at a time when certain information needed for appropriate classification may not be immediately available. However, the brevity of the booking process and the possible lack of background information do not obviate the need to identify potentially vulnerable or abusive individuals and ensure they do not become victims or perpetrators. The final standard addresses jails' concerns by making a clearer distinction between the initial process of collecting risk information upon intake to make provisional decisions about protection and placement, and the subsequent reassessment of the inmate's risk after receiving fuller information.

The final standard uses the term ''intake screening'' to describe the collecting of information from a person brought to a facility. Facilities should be able to readily obtain the information referenced in the enumerated criteria, and this intake screening can and should occur within 72 hours of the person's arrival at the facility. Facilities are strongly encouraged to conduct the intake screening sooner, to the extent circumstances permit. The ten criteria enumerated in the standard usually will be available through staff observation, direct questioning, or records checks within the 72-hour timeframe.

Inmates who are unable to post a bond or are held subsequent to other warrants or court orders usually remain in custody pending a court appearance. The final standard requires that inmates who remain in custody undergo a more extensive classification process. Within a set period of time, not to exceed 30 days, the facility is to reassess the inmate's risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the intake screening. This requirement recognizes that information relevant to the risk and classification needs will become available as staff interview, assess, and observe the inmate, and as the facility receives information from other agencies and sources.

These revisions take into account the differences between—and among—prisons and jails, as well as the fact that information relevant to a more comprehensive inmate classification may not be immediately accessible. The Department recognizes that the time limits in this standard imply that some inmates will be screened twice, some once, and some—hopefully very few—not at all. These variations are inevitable when crafting a system with sufficient structure and flexibility to ensure that classifications are both effective and efficient.

Comment. Some jail commenters noted that certain inmates are ''frequent flyers'' who rotate in and out of the jail on a regular basis. The commenters stated that an inmate screening would be unnecessary for such inmates, given that the jail would already possess a significant amount of information from their prior admissions.

Response. A facility is free to rely on information previously gathered with regard to a returning inmate; however, the facility should ensure that its assessment captures any changes in risk factors that may have occurred subsequent to the facility's prior gathering of information regarding that inmate.

Comment. Some agency commenters recommended that the final standard defer to State or local laws regarding the screening of inmates.

Response. The final standard provides a set of requirements that can be implemented in a manner consistent with State and local laws; to defer entirely to such laws would abdicate the Department's responsibility to ensure that the standard is satisfied only by screening procedures that provide sufficient protection against abuse.

Comment. Some advocacy commenters recommended that the standard add gender nonconformance to the list of risk factors, on the ground that gender nonconformance gives rise to the same risk of victimization as the inmate's internal identification.

Response. The Department agrees, and has made two additions to this standard. First, the final standard includes consideration of whether the inmate is ''gender nonconforming,'' which is defined in § 115.5 as ''a person whose appearance or manner does not conform to traditional societal gender expectations.'' Second, the standard instructs agencies to take into account not only whether the inmate is LGBTI, but whether the inmate is perceived to be so.

Comment. Some agency commenters feared confusion between § 115.41, which in the proposed rule required that all inmates be screened during the intake process *and* during initial classification, and § 115.81, which required that inmates be asked about prior victimization and abusiveness during intake *or* classification screenings. One jail stated that implementing the standards as written would require the hiring of one additional officer per shift, at an additional annual cost of $840,000. Other agency commenters also expressed budget concerns; some stated that requiring two separate screenings is overly burdensome and that the two standards should be combined.

Response. The Department agrees that, as written, the two standards could cause confusion, and has amended § 115.81 accordingly. Instead of requiring a separate interview to collect information about sexual victimization and abusiveness, the requirements of § 115.81 are triggered only if the screening mandated by § 115.41 indicates that an inmate has experienced prior sexual victimization or perpetrated sexual abuse. This adjustment should eliminate the need for additional staff to conduct separate interviews.

Comment. One agency commenter expressed uncertainty over whether the

''PREA screening'' should be incorporated into the initial classification instrument, and suggested that such incorporation could be problematic because the agency requires inmates to answer questions during its classification process, in contravention of the proposed standard, which provided that ''[i]nmates may not be disciplined for refusing to answer particular questions or for not disclosing complete information.'' The agency therefore recommended that the ''PREA screening'' be separate and distinct from the initial classification process.

Response. This comment indicates that the proposed standard was worded too broadly and inadvertently caused confusion. The intent of the no-discipline phrase was not to grant immunity from discipline for failure to cooperate with intake, but rather to ensure that inmates who are fearful of disclosing sensitive information about risk factors are not punished for failing to disclose such information. Accordingly, the final standard revises this language to clarify that it applies only to questions about disabilities, LGBTI status, gender nonconformance, previous sexual victimization, and the inmate's self-perception of vulnerability.

Comment. A small number of State correctional agencies expressed concern that staffing levels may need to increase to manage additional intake interviews.

Response. As noted above, the clarification of the distinction between intake screening and classification should negate the need for additional classification staff.

Comment. A few agency commenters also expressed concerns that making blank copies of their screening instruments available to the public could compromise their operations; one suggested that if the blank forms were made available, inmates could manipulate the information. The commenter recommended that the standard instead require agencies to identify and publicize the general types of information collected.

Response. Upon reconsideration, the Department concludes that it is unnecessary to require agencies to make available blank copies of their screening instruments, and has removed this requirement from the standard.

Comment. A State correctional agency expressed concern that the screening instrument would collect and rely on items that have not been validated as predictors of risk. The commenter recommended that any instrument used to classify inmates be validated and that funding be provided to develop such an instrument and to revalidate the instrument after three years of use.

Response. To account for the range of agency types and available resources, the Department has chosen not to include a validation requirement. Pre-implementation validation and follow-up validation of risk screening instruments is a commendable practice and, in State systems and other large jurisdictions, comports with generally accepted professional standards. However, some agencies, such as small county jails, may lack sufficient resources to engage in a comprehensive validation study. Because risk factors may have varying degrees of predictive correlation in different jurisdictions, small agencies may need to rely upon reasonable assumptions in developing an objective screening instrument and classification process. Although research into risk factors for institutional sexual victimization and abusiveness remains ongoing, the factors listed in the standard have sufficient bearing upon the risk of victimization or abusiveness to warrant their use when assessing inmates. A validation process, where used, can assist in determining the weight of each identified factor for purposes of informing the housing classification process.

Comment. Some advocates expressed concern that the proposed standard would allow intake and security staff to ask sensitive questions of residents without requiring the appropriate level of training to conduct such interviews. Several commenters urged the Department to adopt the NPREC's recommendation that only medical or mental health providers be allowed to ask such questions, at least in a facility where such providers work on-site. One agency remarked that its screening instrument was developed by a mental health professional, and suggested that an accurate determination of a resident's level of emotional and cognitive development, intellectual capabilities, and self-perception of vulnerability would not be possible without the involvement of such professionals.

Response. The Department remains of the view that appropriately trained intake staff may be competent to ask residents sensitive questions in a professional and effective manner, and thus the final standard leaves to agency discretion how to use staff resources most effectively at intake. The Department expects that the training required in these standards will benefit intake staff who are tasked with such responsibilities.

Comment. One juvenile detention association expressed concern over the lack of distinction between short-term juvenile detention facilities and long-term juvenile correctional facilities. The commenter noted that in detention settings, the facility may have no information about the inmate other than a court order. The commenter warned that asking questions about sexual victimization or abusiveness upon the resident's arrival at the facility could be viewed as intrusive, could produce anxiety, and could ''set the wrong tone for the stay in detention.''

Response. The Department recognizes that an agency will not always be able to ascertain information about each of the enumerated factors. For example, the resident may choose not to answer certain screening questions, or the facility may not otherwise have access to certain criteria. The standard accounts for these considerations by making clear that the agency shall only ''attempt to ascertain'' the information. The Department expects that an agency will make necessary and reasonable efforts to obtain information. For example, an agency can work cooperatively with law enforcement and social service agencies to obtain information about the resident.

The Department disagrees with the commenter that it is inappropriate to inquire about the resident's prior sexual victimization or abusiveness. First, this information is important in informing housing and programming decisions with the goal of keeping residents safe from abuse. Second, as discussed above, appropriately trained staff can make the inquiries in a professional and sensitive manner. Third, the standard makes clear that residents are not required to provide this information and may not be punished for refusing to provide this information.

Comment. The same commenter indicated that unless the screening instrument is developed by a mental health professional, it will be difficult to assess accurately the resident's level of emotional and cognitive development, intellectual capabilities, and the resident's own perception of vulnerability, and that the development of such a screening instrument could be expensive.

Response. The Department encourages agencies to develop their risk screening instrument and process utilizing a multi-disciplinary team, including input from an appropriate mental health professional. Because agencies and facilities typically employ or contract with mental health professionals, the Department does not believe that such input would be cost prohibitive. In addition, the National Resource Center for the Elimination of

Prison Rape and other agencies and technical assistance providers can assist with the development of a risk-screening program that may be applicable or adaptable across systems.

Comment. NPRM Question 21 asked whether, given that lockup detention is usually measured in hours, and that lockups often have limited placement options, the final standard should mandate rudimentary screening requirements for lockups. Advocates strongly favored screening requirements, and suggested that many police lockups already employ basic measures aimed at protecting inmates from sexual abuse. Noting that a full classification process may not be necessary, advocates recommended that lockups be required to collect information similar to what the proposed standard required longer-term facilities to gather, especially if lockups hold multiple inmates in the same cell. Commenters also recommended that lockups conduct a basic screening to ensure that highly vulnerable inmates are not left alone with likely perpetrators even for short periods of time.

Advocates proposed adding a list of known indicators of vulnerability, including mental and physical disability, young age, slight build, nonviolent history, identification as LGBTI, gender nonconforming appearance, and prior victimization. Some also proposed requiring lockups to ask detainees about their own perception of vulnerability and to provide heightened protection to detainees who perceive themselves to be vulnerable.

Few agency commenters responded to the question; those that did mostly supported requiring lockups to administer some type of screening instrument or process. Some remarked that lockups were so small, and lengths of stay so brief, that the standards should not mandate a screening, and that any such standard should allow maximum flexibility.

Response. The Department has added screening requirements for lockup facilities, distinguishing between lockups that hold detainees for a few hours, such as court holding facilities, and lockups where individuals may be held overnight, such as police stations. This revision adds protections for lockup detainees while recognizing that lockups are situated very differently from prisons and jails and often do not conduct intake as that term is traditionally understood.

In lockups that are not used to house detainees overnight, before placing any detainees together in a holding cell, staff must consider whether, based on the information before them, a detainee may be at a high risk of being sexually abused and, when appropriate, must take necessary steps to mitigate any such danger to the detainee.

In lockups that are utilized to house detainees overnight, all detainees must be screened to assess their risk of being sexually abused by other detainees or sexually abusive toward other detainees, and all detainees must be asked about their own perception of vulnerability. The screening process in such lockups shall also consider—to the extent that the information is available—whether the detainee has a mental, physical, or developmental disability; the age of the detainee; the physical build and appearance of the detainee; whether the detainee has previously been incarcerated; and the nature of the detainee's alleged offense and criminal history. In an effort to minimize the number of screening requirements in lockups, given that there may be no privacy to ask individuals screening questions, the standard does not explicitly include identification as LGBTI, gender nonconforming appearance, or prior victimization in its list of known indicators of vulnerability. However, these indicators may be ascertainable through other listed factors, such as physical build and appearance, and the detainee's own perception of risk.

Use of Screening Information (§§ 115.42, 115.242, 115.342)

Summary of Proposed Rule

The standard contained in the proposed rule required that agencies use the risk screening process to inform housing, bed, work, education, and program assignments with the goal of keeping inmates determined to be at risk of sexual victimization separate from inmates at risk of being sexually abusive. The proposed standard provided that agencies shall make individualized determinations about how to ensure the safety of each inmate, and required that, in placing transgender or intersex inmates, the agency consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems. The proposed standard also provided that transgender and intersex inmate placement be reassessed at least twice each year, and that such inmates' own views as to their safety be given serious consideration.

For community confinement facilities, the proposed standard generally mirrored the standard for prisons and jails, but omitted the requirement that transgender and intersex residents be reassessed twice per year.

For juvenile facilities, the proposed standard required the use of the risk screening process and additional information in order to determine appropriate placement to keep the residents safe from sexual abuse. The proposed standard also limited the use of isolation for purposes of protecting residents, and provided that LGBTI residents may not be placed in a particular housing location based solely on such identification.

The standard in the proposed rule did not apply to lockups.

Changes in Final Rule

The final standard makes two changes applicable to prisons, jails, and community confinement facilities. First, transgender and intersex inmates must be given the opportunity to shower separately from other inmates. Second, the final standard prohibits placing LGBTI inmates in a dedicated unit or facility solely on the basis of LGBTI identification unless such placement is pursuant to a legal requirement for the purpose of protecting such inmates.

The final standard makes multiple changes for juvenile facilities. First, to avoid duplication and confusion, the final standard for juvenile facilities no longer enumerates placement factors but requires the facility to use the types of information obtained pursuant to § 115.341(c) to make housing, bed, program, education, and work assignments for residents, with the goal of keeping all residents safe and free from sexual abuse. Second, the final standard contains added protections for residents who are isolated for purposes of protection. During any period of isolation, agencies shall not deny residents daily large-muscle exercise or any legally required educational programming or special education services. Residents in isolation shall receive daily visits from a medical or mental health care clinician, and shall have access to other programs and work opportunities to the extent possible. Third, agencies may not consider a resident's LGBTI identification as a predictor of likelihood of being sexually abusive. Fourth, the final standard replaces the requirement that agencies make individualized determinations about the placement of transgender and intersex residents with language identical to corresponding language in the standard for adult facilities: That agencies determine, on a case-by-case basis, housing and programming assignments for transgender and

intersex residents for purposes of ensuring the residents' health and safety, as well as any management or security concerns, that such placement decisions shall be reassessed at least twice per year, and that the views of transgender and intersex residents regarding their own safety be given serious consideration. Finally, if a resident is isolated for protective purposes, the agency shall be required to document its justification, and review the continued need for isolation at least every 30 days.

Comments and Responses

Comment. Some agency commenters requested definitions of ''transgender'' and ''intersex.''

Response. As noted above, the final rule includes definitions of these terms in § 115.5.

Comment. Many advocacy commenters urged the inclusion of ''gender nonconforming'' and ''perceived to be'' LGBTI as screening factors.

Response. As discussed above, the Department has made this change.

Comment. Many advocate commenters opposed the omission from the proposed standard of the NPREC's recommended ban on assigning inmates to particular units based solely on their sexual orientation or gender identity. Commenters noted that it is impossible to state categorically that such units are safer and expressed concern that occupants might not be afforded programs and services equal to those of other inmates. Commenters also worried that such units could be used to punish inmates for their sexual orientation or gender identity.

Several commenters remarked that these designated units can be successful only in certain circumstances. Some asserted that the unit operated by the Los Angeles County Jail for gay male and transgender inmates, specifically mentioned in the discussion of this standard in the proposed rule, is the exception rather the norm. These commenters stated that inmates in this unit retain access to substantial programming—often more than what is available in the general population—and that the jail has a sufficiently large gay male and transgender population to fill multiple wings, thus allowing these inmates to be segregated without experiencing isolation. The commenters suggested that successfully maintaining a unit based solely on sexual orientation or gender identity requires a demonstrated need, sufficient facility size and LGBTI inmate population, a basic level of cultural competence among staff, and an institutional commitment to safety and fairness toward these populations.

Many commenters proposed language that would allow such units only under narrowly defined circumstances, such as where placement is based on a finding made by a judge or outside expert or is pursuant to a consent decree, legal settlement, or legal judgment—an exception apparently designed to encompass the Los Angeles County Jail.

Other commenters supported including the NPREC's recommendation that the standard prohibit such units entirely; one law professor disputed the notion that the Los Angeles County Jail was effective at protecting inmates or otherwise worthy of emulation.

Response. Upon reconsideration, the Department concludes that agencies should retain the option of using dedicated facilities, units, or wings to house LGBTI inmates. However, the Department agrees that to do so carries its own risk, and that it should be undertaken only in limited contexts. Because it would not be feasible for the Department to anticipate every case or circumstance that might warrant such placements, the Department has chosen to adopt a final standard that allows use of this practice only where the dedicated facility, unit, or wing is established in connection with a consent decree, legal settlement, or legal judgment.

Comment. By contrast, the proposed standard did not allow such placements in juvenile facilities. One juvenile agency expressed concern about this prohibition, asserting that it would present operational challenges and might put residents at risk.

Response. The Department respectfully disagrees with this assessment, which was not shared by advocacy groups. Despite good intentions, the practice of using dedicated facilities, units, or wings to house LGBTI inmates may result in youth being unable to access the same privileges and programs as others in general population housing, effectively punishing youth for their LGBTI status. The Department adheres to the assessment expressed in the NPRM: ''Given the small size of the typical juvenile facility, it is unlikely that a facility would house a large enough population of such residents so as to enable a fully functioning separate unit, as in the Los Angeles County Jail. Accordingly, the Department believes that the benefit of housing such residents separately is likely outweighed by the potential for such segregation to be perceived as punishment or as akin to isolation.'' 76 FR 6258. While some LGBTI residents may require protective measures, such an assessment should occur only after a holistic assessment of the risk confronting the specific inmate, and should not be implemented automatically as a matter of facility policy.

Comment. Some advocates recommended that the final standard ensure that transgender and intersex inmates have an opportunity to shower separately, owing to the unique risks that such inmates face in facilities.

Response. The final standard adds such a requirement.

Comment. Some commenters suggested several additional safeguards to protect against excessive use of isolation, including reviewing the status of a youth in isolation every 24 hours, limiting use of isolation to no more than 72 hours, and ensuring that isolated residents are provided access to programs and services.

Response. The Department agrees that long periods of isolation have negative and, at times, dangerous consequences for confined youth. However, in limited situations, protective isolation longer than 72 hours may be necessary to keep youth safe from sexual abuse, especially in small facilities with limited housing options and programming space. While not imposing a specific limit on the duration of any such protective isolation, the final standard contains a number of provisions limiting the use of isolation and providing enhanced protections for youth when they are isolated. First, the final standard prohibits the use of protective isolation except as a last resort when less restrictive measures are inadequate to keep them and other residents safe, and then only until an alternative housing option can be arranged. Second, for any such placement, agencies must document the need for isolation, and reassess its use at least every 30 days. In addition to requiring the agency to justify the use of isolation and to periodically reassess it, this provision will provide a mechanism for the PREA auditor to examine whether the use of isolation is being used appropriately. Third, the final standard provides that any youth in protective isolation must receive daily large-muscle exercise, any legally required education and special education programming and services, and daily visits from medical care or mental health care clinicians. In addition, agencies must provide isolated youth with access to other programming to the extent possible.

Comment. One State juvenile justice agency expressed strong concerns about proposed standard § 115.342(b), arguing

that the specification of information that agencies are required to consider exceeds PREA's scope and improperly dictates agency placement policy. The comment recommended that the standard provide only that the risk of abuse upon or by a resident be considered when making placement decisions.

Response. The risk-screening factors enumerated in § 115.341 (and incorporated by reference into § 115.342) may yield information that is predictive of a resident's risk of sexual victimization or sexual abusiveness. Requiring consideration of such factors in no way dictates agency placement policy; the standard does not require that a resident meeting specific screening criteria be housed in a specific placement. Nor does the standard mandate the weight to be assigned to any of the enumerated factors in making placement or classification decisions. Rather, the standard provides that the agency shall attempt to ascertain specific information about the resident, and that the agency develop an objective, rather than subjective, process for using that information with the goal of keeping residents safe from sexual abuse.

Comment. Juvenile justice advocates requested that the final standards clarify that being LGBTI is a risk factor for being victimized by sexual abuse, not for committing sexual abuse.

Response. The Department is not aware of any evidence to suggest that LGBTI identification or status is a risk factor for perpetrating sexual abuse. For this reason, and to prevent negative stereotypes of such juveniles from affecting placement decisions, the final standard specifically prohibits considering LGBTI identification or status as a predictor of sexual abusiveness in juvenile facilities.

Comment. Some advocates criticized the Department for failing to adopt NPREC supplemental immigration standard ID–6, which would require immigration detainees to be housed separately from other inmates.

Response. The final standards addressing screening (§§ 115.41, 115.141, 115.241, 115.341) require that agencies develop a screening instrument that measures risk of sexual victimization according to numerous criteria, including whether the inmate is detained solely for civil immigration purposes. The Department believes that the requirement that agencies use that screening information to make individualized determinations regarding housing, bed, work, education, and program assignments is sufficient to protect immigration detainees in State, local, and BOP facilities without a specific requirement that they be housed separately in every instance, particularly when weighed against the substantial burden that such a mandate would impose.

Protective Custody (§§ 115.43, 115.68, 115.368)

Standards in Proposed Rule

Section 115.43 in the proposed rule provided that inmates at high risk of sexual victimization, or who are alleged to have suffered sexual abuse, may be placed in involuntary segregated housing only after an assessment of all available alternatives has been made—and only until an alternative housing arrangement can be implemented. The proposed standard also specifically defined the assessment process, specified required documentation, and set a presumptive timeframe for placement in protective custody. In addition, the proposed standard provided that, to the extent possible, involuntary protective custody should not limit access to programming.

Section 115.66 in the proposed rule (now renumbered as § 115.68) provided that any use of segregated housing to protect an inmate who is alleged to have suffered sexual abuse shall be subject to the requirements of § 115.43.

Changes in Final Rule

The standard contained in the final rule clarifies that inmates shall not be placed involuntarily in protective custody, unless an assessment of available alternatives has been made, and a determination has been made that no other alternative means of separating the inmate from the abuser exist. The final standard adopts a 24-hour timeframe to make this initial assessment.

The final standard also adds a requirement that if the facility restricts access to programs, privileges, education, or work opportunities, it must document the opportunities that have been limited, the duration of the limitation, and the reasons for such limitations.

Finally, the final standard shortens the presumptive time limit for involuntary protective custody from 90 days to 30 days, and shortens the timeframe for periodic reviews for the need for continued separation from 90 days to 30 days.

Comments and Responses

Comment. One advocacy group commented that, although the proposed standard required programming to be provided to inmates in protective custody to the extent possible, such programming could still be routinely denied. The commenter suggested that agencies be required to document the programming opportunities that have been limited, the duration of the limitation, and the reasons for the limitation.

Response. The Department agrees that a documentation requirement will assist in auditing this standard, and would provide agencies a formal mechanism to use in making programming assessments, and has amended the standard accordingly.

Comment. Several commenters criticized as too lengthy the 90-day presumptive time limit for productive custody, as well as the requirement for periodic reviews every 90 days. Commenters suggested changing both to 30 days.

Response. Upon reconsideration, the Department concludes that 30 days should ordinarily suffice to arrange for alternate means of separation from likely abusers. In addition, the final standard requires that a review be provided at least every 30 days thereafter, in order to ensure that the situation is being actively monitored should the initial placement in protective custody be extended.

Comment. A number of inmate, advocate, and individual commenters indicated that involuntary protective custody was, in effect, punitive, because inmates subject to this type of classification are sometimes isolated or otherwise denied essential programming and services. These commenters suggested that the conditions of protective custody housing may deter the reporting of sexual abuse or the threat of sexual abuse.

Response. In certain circumstances, involuntary protective custody may be necessary to keep inmates safe from sexual abuse. However, the final standard makes clear that this type of housing should only be used when, pursuant to an administrative assessment, no better alternative is available. The standard also requires that any denial of programming to inmates in protective custody be documented and justified.

Comment. A number of advocates commented that an inmate's gender identity should not be the sole basis for placement of the inmate in involuntary protective custody.

Response. Sections 115.42, 115.242, and 115.342 provide that housing placement determinations for LGBTI inmates shall be made on a ''case-by-case'' basis. This would preclude automatic placement in involuntary

protective custody on the basis of gender identity.

Inmate Reporting (§§ 115.51, 115.151, 115.251, 115.351)

Summary of Proposed Rule

In the proposed rule, §§ 115.22(a), 115.222(a), and 115.322(a) stated that agencies should maintain or attempt to enter into memoranda of understanding or other agreements with an outside public entity or office that is able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to agency officials pursuant to §§ 115.51, 115.251, or 115.351 unless the agency enables inmates to make such reports to an internal entity that is operationally independent from the agency's chain of command, such as an inspector general or ombudsperson who reports directly to the agency head. The proposed standards also required agencies to maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that are able to provide inmates with confidential emotional support services related to sexual abuse. Finally, agencies were required to maintain copies of agreements or documentation showing attempts to enter into agreements.

Sections 115.51, 115.151, 115.251, and 115.351 required agencies to enable inmates to privately report sexual abuse and sexual harassment and related misconduct. Specifically, this standard required that agencies provide multiple internal ways for inmates to privately report sexual abuse and sexual harassment, retaliation by other inmates or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to sexual abuse. The proposed standard also required that agencies make their best efforts to provide at least one way for inmates to report abuse or harassment to an outside governmental entity that is not affiliated with the agency or that is operationally independent from agency leadership, such as an inspector general or ombudsperson.

The proposed standard also mandated that agencies establish a method for staff to privately report sexual abuse and sexual harassment of inmates.

Finally, the proposed standard required that juvenile residents be provided access to tools necessary to make written reports, whether writing implements or computerized reporting.

Changes in Final Rule

The final standard requires prisons, jails, and juvenile facilities to provide at least one way for inmates to report abuse or harassment to a public or private entity or office that is not part of the agency, and that is able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to agency officials. By contrast, the proposed standard required only that facilities make their ''best efforts'' to provide such access, and did not allow a private entity to serve this function. By expanding the outside reporting option to include private entities, the final standard allows an agency, in its discretion, to utilize a private rape crisis center or similar community support service for these purposes, as appropriate.

The final standard also specifies that the outside entity must allow the victim to remain anonymous upon request.

Consistent with these revisions, the final standard no longer requires agencies to maintain or attempt to enter into agreements with an outside public entity that is able to receive and immediately forward inmate reports of sexual abuse. Such a requirement is no longer necessary now that agencies are required to provide reporting access to an outside entity, which may be public or private.

In lockups and community confinement facilities, the ''best efforts'' requirement of the proposed standard has been replaced with a requirement that agencies inform detainees or residents of at least one way to report abuse or harassment to a public or private entity or office that is not part of the agency.

The standard no longer contemplates the use of an internal entity that is operationally independent from the agency's chain of command. If the agency designates a government office to accept reports for the purposes of this standard, it must be outside of and completely independent from the correctional agency.

Finally, for inmates detained solely for civil immigration purposes in jails, prisons, and juvenile facilities operated by States, localities, and BOP, the final standard requires that the facility also provide information on how to contact relevant consular officials and relevant officials at the Department of Homeland Security.

Comments and Responses

Comment. Section 115.22 appeared to engender some confusion because it covered agreements for the purpose of outside reporting as well as agreements for the purpose of providing support services for victims. In addition, commenters were unclear as to how § 115.22 interacted with §§ 115.51 and 115.53, given the topical overlap.

Response. For clarity, the subject matter covered by proposed standard § 115.22 has been moved into §§ 115.51 and 115.53, as appropriate.

Comment. The proposed standards evoked a strong response from current and former inmates, who expressed the view that an outside reporting mechanism is essential to encourage reporting incidents of sexual abuse, because inmates often do not feel comfortable reporting to staff and may fear retaliation, especially when the abuser is a staff member. Thus, inmates may be reluctant to trust any internal entity, even if it is ''operationally independent'' from the agency's chain of command. Various advocacy groups and rape crisis centers, as well as a United States Senator, agreed with this reasoning. Many stated that some inmates are unlikely to understand or trust the distinction between an operationally independent entity, including an internal inspector general's office, and other agency offices. These commenters expressed the view that a reporting entity that answers to the same agency head could be perceived as part of the system that failed to protect the inmate in the first place. Many inmates commented that reports to allegedly independent entities, such as an ombudsperson, were routinely ignored.

Some correctional agencies argued that requiring an outside reporting mechanism would constitute an unfunded mandate. Commenters stated that local support services may not be available to county jails in rural areas, and that staffing a hotline can be expensive. They also asserted that BJS data demonstrate that sexual abuse is less likely in rural jails, and that they would be paying for a service to respond to an event that rarely occurs. One correctional agency stated that an internal hotline to a facility investigator should be sufficient given improvements in staff training and increased focus on combating sexual abuse within facilities.

Response. The final standard requires all prisons, jails, and juvenile facilities to provide at least one way for inmates to report abuse or harassment to a public or private entity or office that is not part of the agency. The standard no longer allows compliance by relying on an internal entity that is operationally independent from the agency's chain of command. However, an agency may designate a government office that is outside of and completely independent from the correctional agency. For example, if a State has an inspector

general's office that sits outside of, and does not report to, the State correctional agency, the agency may satisfy this standard by designating that office as the external reporting entity. An inspector general's office within the agency would not qualify under these standards, even if it is ''operationally independent'' from the facility administration. While this change may increase the burden on some agencies, inmates must feel comfortable reporting any incident of sexual abuse and may be loath to do so if their only option is reporting to an entity they view as part of the agency in which they suffered the abuse.

The Department does not believe that this will impose a significant cost burden. The final standard does not require a hotline or a formal agreement between the facility and any specific outside entity. Rather, the agency need only establish an avenue for inmates to make contact with an outside entity—whether public or private—that can receive and forward reports of sexual abuse or sexual harassment to the agency. For example, an agency may choose to provide access to an external reporting hotline, or may provide a method for inmates to send confidential correspondence to an external entity. The standard thus provides flexibility for a facility to choose or develop the most appropriate external reporting mechanism to fit its needs.

To be sure, the Department recognizes the value of internal hotlines and encourages their use. Indeed, the final standards require multiple internal ways for inmates to privately report sexual abuse and sexual harassment. However, the Department agrees with advocates and inmates who argued that an external reporting mechanism is necessary to address situations in which victims do not feel safe reporting to anyone inside the correctional system.

The standard requires lockups and community confinement facilities to inform detainees or residents of at least one way to report abuse or harassment to a public or private entity or office that is not part of the agency, but does not require them affirmatively to provide detainees and residents with access, as is the case for prisons, jails, and juvenile facilities. Unlike adult prisons and jails and juvenile facilities, lockups typically hold inmates briefly before release or transfer to a jail, and community confinement facility residents usually are able to leave the facility during the day for various reasons and generally have greater access to community resources. Hence, the populations of the latter facilities will generally have greater access to make contact outside these of these facilities.

Comment. Many advocates, as well as former and current inmates, commented that the standards must allow confidential reporting because some inmates may be too afraid of retaliation to report otherwise, even when reporting to an outside entity. One inmate recommended that allegations be forwarded to the facility only with the victim's consent. Many rape crisis centers and other community support groups commented that confidential reporting is important because, in their experience, victims are much more likely to report sexual abuse and cooperate with the investigation when they feel safe in doing so.

A number of inmates and advocates suggested that some victims would not report an incident if the facility would learn of the report, even if the victim's identity was not revealed, and therefore requested complete confidentiality as an option. In contrast, many correctional agencies expressed concern that such an option would prevent them from learning about problems within their facilities and would preclude thorough investigations into allegations, in tension with the goals of a zero-tolerance policy.

One commenter recommended that, in case agency officials are not responsive, the outside entity should have the option to take information to outside law enforcement if deemed in the victim's best interest and should be allowed not to disclose that information to the agency.

Response. The Department recognizes the potential tension between encouraging inmates to report sexual abuse and ensuring that facilities have sufficient information to investigate allegations and address safety concerns. The final standard includes language requiring the outside reporting entity to allow the victim to remain anonymous upon request and retains the language from the proposed standard that requires facility staff to accept anonymous reports. Allowing anonymity protects the inmate's identity, but still provides the facility with basic information about the allegation. Ideally, a facility would receive complete information about every alleged incident of sexual abuse, including a first-hand report from the victim. But an anonymous report about an incident is preferable to no report at all. As many commenters noted, reports made anonymously are otherwise unlikely to be reported; thus, providing this avenue should actually increase the amount of information available to the facility. In addition, even if such a report may not allow for a full investigation into the incident, providing information about an incident generally, without the identity of the victim, will alert staff to potential concerns and may help reveal unsafe areas within the facility.

With regard to reporting to law enforcement, nothing precludes an outside reporting entity from reporting allegations of abuse to the relevant law enforcement authorities or other entities, as appropriate. The outside entity should also have the discretion to report specific incidents at different administrative levels within a facility. If, for example, the facility investigator is the subject of an inmate report, the outside entity should forward that report to the facility superintendent or other agency administrator, instead of to the investigator.

Comment. Some advocacy groups requested that the standards mandate entering into a memorandum of understanding with an outside agency to serve as a third-party reporting entity, and allow reliance on an independent, internal reporting option only if documented attempts to enter into such agreements are unsuccessful. On the other hand, many correctional agencies opposed any requirement for a formal agreement with an outside entity as unnecessary, expensive, and burdensome. Some facilities noted that finding a third party to provide such a service might be difficult in rural areas.

Response. Many facilities would benefit from a formal agreement or memorandum of understanding to ensure that inmates can effectively report allegations of sexual abuse and sexual harassment. Indeed, some correctional agencies noted that they already have in place these types of agreements. Other facilities are able to provide outside services without such an agreement, whether through a private entity or through a government office that is external to and independent from the correctional agency. Given the varying needs and abilities of different facilities, the Department has opted to grant agencies discretion to provide the requisite external reporting mechanism in the most appropriate manner for the specific facility or incident at issue.

Comment. Some correctional agencies expressed concern that the proposed standard would conflict with applicable State law. For example, the Florida Department of Corrections stated that, under Florida law, it maintains authority over investigations within the prison system, and that requiring inmates to report allegations to an entity that has no jurisdiction would conflict with a State statute.

Response. The standard does not require the external reporting entity to investigate the allegations of sexual abuse. Rather, the external entity should receive and immediately forward inmate reports of sexual abuse and sexual harassment to agency officials, keeping the name of the inmate anonymous upon request.

Comment. A juvenile justice agency and the Council of Juvenile Correctional Administrators requested that § 115.351(e) be revised to require agencies to provide a method for staff to ''officially'' report sexual abuse and sexual harassment of residents, instead of allowing for staff to report ''privately.'' These commenters stated that because staff are legally obliged to report sexual abuse and harassment of youth, there should be no provision for ''private'' reporting.

Response. The Department does not believe that private reporting conflicts with the obligation to comply with mandatory reporting laws. In requiring agencies to provide a method for staff to report sexual abuse and sexual harassment ''privately,'' the Department means that agencies must enable staff to report abuse or harassment directly to an investigator, administrator, or other agency entity without the knowledge of the staff member's direct colleagues or immediate supervisor. A private reporting mechanism may provide a level of comfort to staff who are concerned about retaliation, especially where the staff member reports misconduct committed by a colleague. As some advocates noted, a private reporting option, partnered with zero tolerance for sexual abuse, may encourage staff who would otherwise remain silent, despite mandatory reporting laws, to report sexual abuse and sexual harassment.

Comment. In the NPRM, the Department noted that the Department of Defense provides a ''restricted reporting'' option that allows service members to confidentially disclose the details of a sexual assault to specified employees or contractors and receive medical treatment and counseling without triggering the official investigative process and, subject to certain exceptions, without requiring the notification of command officials or law enforcement. *See* Department of Defense Directive 6495.01, Enclosure Three; Department of Defense Instruction 6495.02. NPRM Question 23 asked whether the final standards should mandate that agencies provide inmates with the option of making a similarly restricted report to an outside public entity, and to what extent, if any, such an option would conflict with applicable State or local law.

Correctional agencies that responded to this question were generally opposed to a reporting option that would prohibit an official investigation. Agencies stressed the need to adequately investigate any potential abuse in order to ensure inmate safety and compliance with other standards. Some stated that a restricted reporting option would conflict with the goals of a zero-tolerance policy; others suggested it could conflict with State laws requiring mandatory reporting. One commented that a restricted reporting option would be contrary to the intent of the Prison Litigation Reform Act, which seeks to encourage issues to be brought to the attention of prison administrators before litigation occurs. Advocacy groups generally did not focus on Question 23, but many advocate comments recommended that the standards return to the NPREC's proposed language that allowed inmates to request confidentiality or permit confidential reports ''to the extent allowable by law.'' One law student stated that inmates should be entitled to separate their need for medical care from the investigation process, particularly if the inmate believes an investigation is unlikely to positively affect the situation or may lead to danger.

Response. Restricted reporting represents a tradeoff between the victim's interest in privacy and preventing retaliation and, on the other hand, the institution's interest in identifying the abuser for purposes of discipline and preventing further abuse. In some cases, a victim will be too fearful to report if he or she knows that the information will be disseminated beyond medical staff. The Department recognizes that, in the absence of a restricted reporting policy, some victims will not seek needed care.

The cost of a restricted reporting policy, however, is that the institution cannot take steps to prevent the recurrence of the abuse. The dynamics of sexual abuse in correctional facilities make it quite likely that an abuser will subsequently abuse other inmates. An agency that learns of such abuse is far better equipped to prevent future incidents.

Given the competing costs and benefits of restricted reporting policies, the Department chooses not to include in the standards a requirement to adopt a restricted reporting option. Instead, provisions in other standards are designed to mitigate the risks that inmates may be too fearful to come forward. The final standard requires each prison, jail, and juvenile facility to provide multiple ways for inmates to report sexual abuse and sexual harassment, including at least one external reporting mechanism. Anonymous reports must be accepted, but all reports will be forwarded to the facility for investigation. These requirements will enable some inmates who are reluctant to report to facility authorities some ability to find support, and may lead them to reconsider their initial decision not to come forward. In addition, this system should ensure that the facility is made aware of allegations of abuse, while protecting the identities of those inmates who would not come forward if they were not permitted to report anonymously. Finally, §§ 115.82 and 115.83 provide that facilities may not condition any medical or mental health care on the victim's cooperation with any ensuing investigation. A victim who needs care but is reluctant to name the perpetrator of the abuse—or who may not even admit that the injury occurred as result of a sexual assault—must be offered the same level of care as any other inmate presenting similar injuries. Given these requirements, the Department has determined it is not necessary to include a restricted reporting option.

Comment. Some advocacy organizations recommended that the Department include NPREC supplemental immigration standard ID–7, which would require agencies to provide contact information for relevant consular and DHS officials to immigration detainees. These commenters noted that, for these detainees, the DHS Office of the Inspector General and the Office for Civil Rights and Civil Liberties, as well as consular offices, serve the ombudsperson function that is contemplated in the final standard and thus should be made available to immigration detainees who complain of sexual abuse.

Response. The final standard requires that individuals detained solely for civil immigration purposes in State, local, or BOP facilities be provided with information on how to contact relevant consular officials as well as relevant DHS officials.

Exhaustion of Administrative Remedies (§§ 115.52, 115.252, 115.352)

Summary of Proposed Rule

Paragraph (a) of the standard contained in the proposed rule governed the amount of time allotted inmates to file a request for administrative remedies (typically known as grievances) following an incident of

sexual abuse. The proposed standard set this time at 20 days, with an additional 90 days available if an inmate provides documentation, such as from a medical or mental health provider or counselor, that filing sooner would have been impractical due to trauma, removal from the facility, or other reasons.

Paragraph (b) of the proposed standard governed the amount of time that agencies have to resolve a grievance alleging sexual abuse before it is deemed to be exhausted, in order to ensure that the agency is allotted a reasonable amount of time to investigate the allegation, after which the inmate may seek judicial redress. Paragraph (b) required that agencies take no more than 90 days to resolve grievances alleging sexual abuse, unless additional time is needed, in which case the agency may extend up to 70 additional days. The proposed standard did not count time consumed by inmates in making appeals against these time limits.

Paragraph (c) required that agencies treat third-party notifications of alleged sexual abuse as a grievance or request for informal resolution submitted on behalf of the alleged inmate victim for purposes of initiating the agency administrative remedy process. The proposed standard required reports of sexual abuse to be channeled into the normal grievance system (including requests for informal resolution where required) unless the alleged victim requested otherwise. This requirement exempted reports from other inmates in order to reduce the likelihood that inmates would attempt to manipulate staff or other inmates by making false allegations. The proposed standard permitted agencies to require alleged victims to perform properly all subsequent steps in the grievance process, unless the alleged victim of sexual abuse is a juvenile, in which case a parent or guardian could continue to file appeals on the juvenile's behalf unless the juvenile does not consent.

Paragraph (d) governed procedures for dealing with emergency claims alleging imminent sexual abuse. The proposed standard required agencies to establish emergency grievance procedures resulting in a prompt response—unless the agency determined that no emergency exists, in which case the grievance could be processed normally or returned to the inmate, as long as the agency provides a written explanation of why the grievance does not qualify as an emergency. To deter abuse, the proposed standard provided that an agency could discipline an inmate for intentionally filing an emergency grievance where no emergency exists.

Changes in Final Rule

The final standard includes numerous changes.

First, the final standard requires that agencies not impose any deadline on the submission of a request for administrative remedies regarding sexual abuse incidents.

Second, the final standard no longer requires agencies to treat third-party notifications of alleged sexual abuse as a grievance or request for informal resolution submitted on behalf of the alleged inmate victim for purposes of initiating the agency administrative remedy process. Rather, the final standard requires agencies to allow third parties to submit grievances on behalf of inmates. If a third party submits such a request on behalf of an inmate, the facility may require as a condition of processing the request that the alleged victim agree to have the request submitted on his or her behalf, and may also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process. The final standard also provides that third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates, shall be permitted to assist inmates in filing requests for administrative remedies relating to allegations of sexual abuse.

Third, the final standard revises the emergency-grievance provision, which allows an inmate to seek an expedited response where the inmate alleges that he or she is subject to a substantial risk of imminent sexual abuse. As in the proposed standard, the final standard requires an initial agency response within 48 hours and a final decision within five days. However, the standard no longer requires that, if the agency determines that no emergency exists, it must process the grievance as a non-emergency grievance.

The final standard forbids agencies from requiring inmates to seek informal resolution of a grievance alleging sexual abuse as a prerequisite to submitting a formal request for administrative remedies.

The final standard provides that agencies shall ensure that inmates may submit requests for administrative remedies without needing to submit the request to the alleged abuser, and that no request will be referred to an alleged abuser.

The final standard states expressly that an agency that lacks administrative procedures to address inmate grievances regarding sexual abuse need not create such procedures in order to comply with the standard.

Comments and Responses

Comment. Several State correctional agencies asserted that imposing a standard governing the exhaustion of administrative remedies would undermine or violate the Prison Litigation Reform Act (PLRA).

Response. The final standard is not inconsistent with the PLRA. The PLRA does not require a State to impose any particular administrative exhaustion requirements. Rather, the PLRA requires that an inmate exhaust ''such administrative remedies as are available'' before bringing an action under Federal law. 42 U.S.C. 1997e(a). The PLRA thus affords States a procedural defense in court by requiring inmates with grievances to satisfy such administrative exhaustion requirements as States may adopt. Providing a State with an incentive to structure an administrative remedy in a particular manner would not relieve an inmate of the PLRA's requirement that he or she exhaust whatever administrative remedies a State ultimately chooses to make available. Furthermore, the PLRA does not immunize from change any exhaustion requirements that States may adopt, nor does it bar the use of Federal financial incentives, such as the incentives provided by PREA, to induce States to revise their requirements.

Comment. Several correctional agency commenters noted that they either do not have administrative remedy proceedings at all, or otherwise do not apply their administrative remedy proceedings to allegations or grievances involving sexual abuse. Some such commenters, joined by a number of advocacy organizations, suggested that administrative remedy procedures are not appropriate for grievances involving sexual abuse.

Response. Paragraph (a) of the final standard clarifies that an agency need not create administrative procedures to address grievances involving allegations of sexual abuse if it currently lacks such procedures. This standard is meant to govern only the contours of administrative remedy procedures, due to the fact that under the PLRA, exhaustion of any such procedures is a prerequisite to access to judicial remedies. The Department leaves to agency discretion whether to utilize such administrative remedies as part of its procedures to combat sexual abuse. As noted in § 115.51 and its counterparts, agencies must provide multiple internal ways to report abuse, as well as access to an external reporting channel. A grievance system cannot be the only method—and should not be expected to be the primary method—for

inmates to report abuse. Agencies should remain aware that inmates' concern for confidentiality and fear of retaliation, whether or not well-founded, may discourage inmates from availing themselves of administrative remedies.

An inmate in an agency that lacks any administrative remedies may proceed to court directly. Accordingly, this standard is inapplicable to agencies that lack administrative remedy schemes. Likewise, if an agency exempts sexual abuse allegations from its administrative remedies scheme, an inmate who alleges sexual abuse may proceed to court directly with regard to such allegations, and this standard would not apply. Some agencies exempt sexual abuse allegations from their remedial schemes entirely, such as the West Virginia Division of Corrections,[33] while others exempt only such allegations against staff, such as the City of New York Department of Correction.[34] In the latter case, this standard would continue to apply to allegations against inmates.

Comment. Many advocates recommended that the final standard require that agencies not impose any time limit for submitting administrative grievances alleging sexual abuse. These commenters opined that inmates may take months or even years to report sexual abuse, perhaps waiting until their abuser is no longer housed or posted in their vicinity. Commenters stressed that the time limits would pose particular difficulties for juveniles, who may be more hesitant than adults to report abuse. Some advocates recommended eliminating the deadline altogether, while others suggested that if a deadline were required, it should be 180 days.

The 90-day extension provision received significant criticism. Advocates asserted that obtaining the documentation required by the proposed standard to justify such an extension would be difficult at best and often impossible. Many correctional agency commenters agreed with advocates that the 90-day extension was unworkable. One State correctional agency commented that such a requirement might well subject its counselors and mental health providers to complaints and lawsuits for failing to provide requested documentation in a timely manner.

Response. After considering the many comments on this issue, the Department has revised the standard to require that agencies not impose any time limit on the filing of a grievance alleging sexual abuse. While some inmates will submit false grievances, it is unlikely that the number of such false grievances will rise appreciably if an inmate is granted more time to submit a grievance regarding sexual abuse. Even in an agency with a 20-day limit, an inmate who is inclined to invent an incident of sexual abuse could simply allege that it occurred within 20 days. The Department found merit in comments that expressed concern that inmates may require a significant amount of time in order to feel comfortable filing a grievance, and might need to wait until their abuser is no longer able to retaliate. Requiring the removal of time limits increases the ability of such inmates to obtain legal redress and increases the chance that litigation will play a beneficial role in ensuring that correctional systems devote sufficient attention to combating sexual abuse.

The Department considered revising the standard to allow a lengthy time limit, such as 180 days, but concluded that no interest is served by allowing the filing of grievances up until that point but not beyond. Importantly, one key time limit will still apply: The statute of limitations. Federal suits filed against State officials under 42 U.S.C. 1983 are governed by the general State personal injury statute of limitations, *see Owens* v. *Okure,* 488 U.S. 235 (1989), which in the vast majority of States is three years or less.[35] Paragraph (b)(4) clarifies that this standard does not restrict an agency's ability to defend a lawsuit on the ground that any applicable statute of limitations has expired. Thus, if the applicable State statute of limitations is three years, an inmate who files a grievance alleging that abuse occurred four years ago will be unable to seek judicial redress after exhausting administrative remedies if the agency asserts a statute of limitations defense. The statute of limitations provides a backstop against the filing of stale claims, as it does for analogous claims of sexual abuse experienced in the community at large.

Paragraph (b)(2) has been added to make clear that paragraph (b)(1) applies only to those portions of a grievance that actually involve allegations of sexual abuse. In other words, if an agency applies time limits to grievances that do not involve allegations of sexual abuse, inmates may not circumvent those timelines by including such allegations in a grievance that also alleges sexual abuse.

Comment. Several advocacy groups recommended that the final standard mandate that agencies allow inmates to submit a formal grievance without first requiring them to avail themselves of informal grievance processes. Commenters noted that, in cases where an inmate alleges sexual abuse by a staff member, informal resolution may require the inmate to interact with the perpetrator or with a person who may be complicit in the abuse.

Response. The final standard prohibits requiring inmates to seek informal resolution of a grievance alleging sexual abuse as a prerequisite to submitting a formal request for administrative remedies. Informal resolution typically requires the inmate to discuss the subject of the grievance with staff. In the case of sexual abuse, this process is unlikely to resolve the grievance, and may force the inmate to discuss the grievance with the abuser or with a staff member who works closely with the abuser.

Comment. Several advocates recommended that the final standard require that agencies ensure that inmates may file grievances without having contact with their alleged abusers.

Response. The final standard makes clear that agencies shall establish procedures pursuant to which inmates can submit grievances alleging sexual abuse to staff members who are not subjects of the complaint, and that such grievances may not be referred to any subject of the complaint. These explicit protections will help ensure that inmates are not dissuaded from submitting grievances following sexual abuse, and that staff members who are subjects of such grievances cannot influence the administrative process that ensues.

Comment. Few comments were received on the elements of the proposed standard that governed the amount of time to resolve administrative grievances involving allegations of sexual abuse. A few commenters believed the timeframe was too long, while one State correctional agency recommended extending the presumptive time limit from 90 days to 100.

Response. The final standard retains the basic structure of this provision, with certain changes. Paragraph (d)(2) clarifies that the 90-day time period does not include time consumed by

[33] *See* W.Va. Code 25–1A–2(c); *White* v. *Haines,* 618 SE.2d 423, 431 (W. Va. 2005).

[34] *See* City of New York Department of Correction, Directive 3375R–A, at 2 (2008), available at *http://www.nyc.gov/html/doc/downloads/pdf/3375R-A.pdf.*

[35] *See* Martin A. Schwartz, 1 Section 1983 Litigation § 12.02[B][5] (2007 ed.). Several courts of appeals have held that the same statute of limitations should apply to actions against Federal officials filed under *Bivens* v. *Six Unknown Named Agents of the Federal Bureau of Narcotics,* 403 U.S. 388 (1971). *See Kelly* v. *Serna,* 87 F.3d 1235, 1238 (11th Cir. 1996) (citing cases).

inmates ''in preparing any administrative appeal,'' rather than merely ''in appealing any adverse ruling.'' The revised language is more accurate and inclusive, because in some cases inmates may appeal rulings that are not necessarily or entirely ''adverse,'' but that do not afford the inmate the full remedy sought.

The Department added paragraph (d)(4) in the final standard to address comments that the proposed standard, as written, could be interpreted to mean that a grievance might not be considered exhausted if a correctional agency adopted the 90/160-day time limits but nevertheless failed to timely respond to a grievance alleging sexual abuse. Paragraph (d)(4) makes clear that, when an agency fails to respond to an administrative grievance alleging sexual abuse according to its guidelines, an inmate may consider that failure a denial at the corresponding level of administrative review, including at the final level (in which case, the inmate may consider the absence of a timely response as the final agency decision for purposes of exhaustion).

Comment. Several agency commenters stated that the proposed standard's requirement that an agency treat any notification of an alleged sexual assault as a grievance, regardless of the method by which notification was made (other than by notification by a fellow inmate), would pose administrative difficulties, particularly when such notification came from a third party. Commenters suggested that it would be burdensome and impracticable to require staff to complete a grievance form on behalf of an inmate whenever staff learns of an allegation of sexual abuse.

Conversely, several commenters supported a requirement that agencies treat any notification of alleged sexual assault as a grievance, including notifications by other inmates. These commenters stated that complicated administrative processes could frustrate the ability of victims of sexual abuse to exhaust their remedies and seek redress in court. Commenters noted that difficulties in filing and exhausting grievances were particularly acute for complaints involving sexual abuse. Further, many commenters (including correctional agency commenters) noted that juveniles may be more susceptible to peer pressure or other factors that might dissuade them from pursuing a valid grievance alleging sexual abuse. These commenters expressed concern over the provision in the proposed standard that allowed agencies not to treat a notification as a grievance if the alleged victim requests that it not be processed as such.

Response. The final standard does not require agencies to treat any notification as a grievance. Rather, paragraph (e)(1) provides that third parties shall be allowed to submit such grievances on behalf of inmates (and to assist inmates in submitting grievances alleging sexual abuse). If a third party files such a request on behalf of an inmate, the facility may require as a condition of processing the request that the inmate agree to have the request filed on his or her behalf, and may also require the inmate to pursue personally any subsequent steps in the administrative remedy process. If the inmate declines to have the request processed on his or her behalf, the standard requires that the agency document the inmate's decision.

With regard to juvenile facilities, the final standard requires that agencies accept third-party grievances submitted by parents or guardians regardless of the juveniles' acquiescence. This revision addresses concerns that juveniles may be particularly reluctant to agree to the filing of a grievance by a third party. Because parents and guardians represent reliable sources for such complaints, it is appropriate to require their complaints to be treated as grievances, even where the juvenile requests otherwise.

The Department is sympathetic to agency concerns that the requirement in the proposed standard was impractical. In light of other changes to the proposed standard, there is less need to require that a third-party notification be treated as a grievance. By requiring that agencies not impose a deadline on submitting an administrative grievance alleging sexual abuse, allowing third parties to submit grievances on an inmate's behalf, allowing third parties to assist inmates in filing their own grievances, and requiring agencies to implement procedures to avoid the submission or referral of complaints to their subjects, the Department has made it significantly easier for sexual abuse grievances to be filed by the victim or by someone acting expressly on the victim's behalf. As a result of these changes, the Department concludes that it is no longer worthwhile to require agency staff to file grievances whenever they hear of an allegation.

Comment. Some commenters expressed concern that inmates may attempt to circumvent otherwise applicable rules by piggybacking grievances that are governed by those rules onto allegations involving sexual abuse, which may be treated differently.

Response. The final standard addresses this concern in three places. As noted above, paragraph (b)(2) states that the agency may apply otherwise applicable time limits on any portion of a grievance that does not allege an incident of sexual abuse. The addition of ''any portion of'' in paragraph (d)(1) makes clear that the 90-day time limit applies only to those portions of grievances that actually allege sexual abuse. These changes ensure that inmates cannot circumvent stricter deadlines for grievances that do not involve sexual abuse by bootstrapping such grievances onto a grievance that also alleges sexual abuse. Finally, paragraph (f)(2) clarifies that only the portion of a grievance that involves an allegation of substantial risk of imminent sexual abuse need be treated as an emergency grievance.

Comment. Some correctional agency commenters remarked that the emergency procedures required in these standards will be difficult to implement.

Response. The Department believes that the time limits in the emergency procedures provision are reasonable. As noted in the NPRM, these procedures are modeled on emergency procedures already in place in several State correctional agencies. Numerous correctional agencies (and many other commenters) emphasized the need for an immediate response to serious allegations of imminent sexual abuse, and this provision should assist such efforts.

Comment. The proposed standard, in paragraphs (d)(3) and (d)(4), would have permitted agencies to make an initial determination that an emergency grievance did not involve a substantial risk of imminent sexual abuse, and thereafter treat the grievance not as an emergency grievance but rather as an ordinary grievance. Numerous commenters objected to this provision of the proposed standard, noting that agencies could make such an initial determination and thus not be required to provide an initial response within 48 hours or a final agency decision within 5 calendar days. These commenters expressed concern that this escape valve for agencies could essentially swallow the entire rule by allowing agencies to make an initial determination in response to any emergency grievance and thereafter ignore the truncated timelines designed to address such grievances. In cases in which the agency's initial determination was erroneous, these commenters argued, the consequences could be disastrous for the inmate involved.

Response. The final standard requires the agency to treat all grievances alleging the substantial risk of imminent sexual abuse as emergency grievances,

even if the agency determines that no such risk exists. In the event the agency makes that determination, it shall document that decision, but it must do so within the timeframes required by the emergency grievance procedure.

Comment. Numerous commenters objected to paragraph (d)(5) of the proposed standard, noting that it would permit agencies to discipline inmates who submitted emergency grievances while fearing imminent sexual abuse, but where the agency determined that no such danger existed. Commenters stated that such a rule would have a chilling effect on valid grievances, because inmates would fear reprisal if an agency made a factual determination that the grievance did not meet the threshold required for an emergency grievance, even where the inmate believed he or she was in danger. Some commenters recommended that no disciplinary measures should be allowed.

Response. Paragraph (g) of the final standard provides that an agency may discipline an inmate for submitting a grievance alleging sexual abuse only where the agency can demonstrate that the inmate submitted the grievance in bad faith. Upon reconsideration, the Department agrees that the proposed standard erred in allowing discipline whenever an emergency was found not to exist, without requiring a showing of bad faith.

However, the Department declines to revise the standard to disallow disciplinary measures entirely. Agencies should have the discretion to discipline inmates who are not victims of sexual abuse but who attempt to circumvent agency rules by making intentionally frivolous allegations. Such allegations not only waste agency time and resources but also may make correctional officials more dubious about allegations of sexual abuse in general, which could lead to valid allegations receiving insufficient attention.

Access to Outside Support Services (§§ 115.53, 115.253, 115.353)

Summary of Proposed Rule

In the standard contained in the proposed rule, paragraphs (b) and (c) of §§ 115.22, 115.222, and 115.322 required agencies to maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that could provide inmates with confidential emotional support services related to sexual abuse. The proposed standard also required agencies to maintain copies of agreements or documentation showing attempts to enter into agreements.

Sections 115.53, 115.253, and 115.353 required agencies to provide inmates access to outside victim advocacy organizations for emotional support services related to sexual abuse, similar to the NPREC's recommended standard. The proposed standard required that such communications be as confidential as possible consistent with agency security needs. In addition, the proposed standard required that juvenile facilities be instructed specifically to provide residents with access to their attorneys or other legal representation and to their families, in recognition of the fact that juveniles may be especially vulnerable and unaware of their rights in confinement. The proposed standard mandated that juvenile facilities provide access that is reasonable (and, with respect to attorneys and other legal representation, confidential) rather than unimpeded.

Changes in Final Rule

The final standard includes several small changes.

First, the language from § 115.22(b) and (c) and its counterparts has been moved into § 115.53(c) and the latter's counterparts. Only one substantive change has been made in this area: The final standard requires all juvenile agencies to maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that are able to provide residents with emotional support services related to sexual abuse. The proposed standard had exempted juvenile agencies that were legally required to provide such services to all residents.

Second, the final standard includes, in the standards for prisons/jails and juveniles, access to immigrant services agencies for persons detained solely for civil immigration purposes in State, local, and BOP facilities.

Third, where the proposed standard required that the facility enable reasonable communications with such organizations ''as confidential as possible, consistent with agency security needs,'' the final standard requires that such communication be ''in as confidential a manner as possible.'' The facility is also required to inform the victim of the extent to which communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.

Comments and Responses

Comment. As noted above, § 115.22 of the proposed standards appeared to cause confusion because it covered both agreements regarding outside reporting and agreements regarding support services for victims. In addition, commenters were unclear as to how § 115.22 interacted with § 115.53, given the topical overlap.

Response. For clarity, the subject matter covered by proposed standard § 115.22 has been moved into §§ 115.51 and 115.53, as appropriate.

Comment. Numerous nonprofit organizations and some inmates supported the requirement in the proposed standard that agencies maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that could provide inmates with confidential emotional support services related to sexual abuse. These organizations recommended that the agreements between correctional agencies and victim advocacy organizations clarify the services that the organizations can provide and the limits to confidentiality.

Response. The Department agrees that such clarifications are a best practice and will assist the facilities in meeting their obligation to inform victims of the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws. As many service providers noted, affording victims the opportunity for confidential discussions with advocates will help them feel more supported and thus more likely to report abuse and cooperate with its investigation and prosecution.

Comment. A few service providers recommended expanding this standard to include sexual harassment. One organization also recommended requiring agreements with agencies that ''help victims of sexual abuse during their transition from incarceration into the community.''

Response. The Department welcomes agencies' participation in these activities. However, the need is greatest with regard to victims of sexual abuse who are currently incarcerated. Transitioning into the community is, of course, extremely important, but other programs currently exist to serve the needs of reentry more generally.

Comment. Some correctional agencies expressed concern that this standard could threaten the Victims of Crime Act (VOCA) funding of victim services organizations.

Response. Through a separate rulemaking process, the Department

intends to propose removing the current ban on VOCA funding for treatment and rehabilitation services for incarcerated victims of sexual abuse. In addition, even under current requirements, victim services organizations can use other funding to serve incarcerated victims without violating the VOCA requirements.

Comment. The AJA noted that many jails are in rural areas and do not have local agencies to assist.

Response. In such cases, the jail would need only to document its efforts to obtain such assistance and show that there are no local programs that can help.

Comment. One State juvenile justice agency recommended expanding the exception in proposed standard § 115.322, which required juvenile facilities to attempt to enter into memoranda of understanding with community service providers to provide residents with emotional support services related to sexual abuse. The proposed standard contained an exception for facilities that were already legally required to provide such services; the commenter recommended excepting all agencies that in fact provide such services, whether or not they are legally required to do so.

Response. The final standard removes this exception. A facility's own support services may be helpful, but are inherently limited in this context—through no fault of their own—by being situated in and run by the facility in which the abuse occurred, and in which the abuser either lives or works. Whether or not a facility provides such services, therefore, does not affect the need to allow access to outside support.

Comment. Most commenters, including some correctional agencies, expressed support for the requirement that agencies provide inmates with access to outside victim advocates for emotional support services related to sexual abuse. Many advocates, inmates, and a United States Senator expressed concern regarding language in the proposed standard requiring confidentiality only if ''consistent with agency security needs.'' These commenters noted that victims who receive confidential support are more likely to report their assault and cooperate with the investigation. Some advocacy organizations proposed replacing that phrase with ''to the extent allowed by the law.'' On the other hand, one sheriff's department expressed concern about allowing confidential communications, because it might lead to incidents being reported to outside organizations without enabling the facility to learn of the incidents.

Response. The Department believes that it is important for victims to have access to confidential services. The Department concludes that ''consistent with agency security needs'' should be removed because the broad phrasing could create a significant potential for overuse by agencies. The final standard requires agencies to ''enabl[e] reasonable communication between inmates and these organizations, in as confidential a manner as possible.'' The final standard does not add the phrase ''to the extent allowed by law,'' because it may be difficult for agencies to ensure complete confidentiality with all forms of communication due to factors such as the physical layout of the facility or the use of automatic phone monitoring systems, which may be difficult to suspend for support calls without requiring the inmate to make a specific request.

Comment. Some advocacy groups also recommended that the juvenile standard include access to family members and opportunities for family involvement.

Response. While the Department welcomes agencies and victims service organizations who are able to integrate family members into the counseling process, the logistical challenges of doing so counsel against adding such a requirement to the standard.

Comment. Various inmates and one sheriff's office expressed concerns with the logistics of allowing victims to contact outside support services. Many facilities are set up with open phone banks in common day rooms, and the inmate would have to specifically request to use a private phone in order to make a completely confidential phone call.

Response. Providing access to outside support services may involve surmounting logistical hurdles, but the potential benefits of such access should make the effort worthwhile. The National Resource Center for the Elimination of Prison Rape is available to help facilities develop ways to provide such access.

The Department encourages agencies to establish multiple avenues for inmate victims of sexual abuse to contact external victim services agencies. While not ensuring optimal privacy, phones may provide the best opportunity for inmates to seek help in a timely manner. Privacy concerns may be allayed through other methods of contacting outside organizations, such as allowing confidential correspondence, opportunities for phone contact in more private settings, or the ability of the inmate to make a request to contact an outside victim advocate through a chaplain, clinician, or other service provider.

Comment. Another inmate stated that, because he is incarcerated for a sex crime, he was not able to receive assistance from a sexual assault services provider.

Response. The Department expects that organizations that enter into such memoranda of understanding should help victims of sexual abuse without regard to whether they may have perpetrated sexual abuse in the past.

Comment. One inmate expressed a preference for in-person counseling.

Response. The Department is aware that some correctional systems have been able to offer in-person counseling, and encourages systems to consider doing so. However, logistical challenges militate against making this a requirement in the standard.

Comment. One State juvenile justice agency recommended that contact with outside services be at the discretion of agency mental health staff.

Response. The purpose of this standard is for victims to be able to reach out for help without seeking staff approval, which may require disclosing information to staff that the resident may prefer, at least for the time being, to remain confidential.

Comment. A regional jail association recommended providing specific actions or checklists to help guide auditors.

Response. The National Resource Center for the Elimination of Prison Rape will do so.

Comment. Some advocacy organizations commented that the Department should adopt NPREC supplemental immigration standard ID–8, which would require agencies with immigration detainees to provide those individuals with access to community service providers that specialize in immigrant services, as well as supplemental standard ID–1, which would mandate agreements or memoranda of understanding with these organizations. These commenters noted that immigration detainees who suffer from sexual abuse may have unique needs that only specialized service providers can meet.

Response. The Department agrees that agencies covered by these standards should provide immigration detainees with access to service providers that can best meet their needs. The final standards require that State, local, or BOP facilities that detain individuals solely for civil immigration purposes provide those individuals with access to immigrant services agencies. It also requires agencies to enter into, or attempt to enter into, agreements with

organizations that provide these services.

Third-Party Reporting (§§ 115.54, 115.154, 115.254, 115.354)

Summary of Proposed Rule

The standard contained in the proposed rule required facilities to establish a method to receive third-party reports of sexual abuse and to distribute publicly information on how to report sexual abuse on behalf of an inmate. In addition, the proposed standard required juvenile facilities to distribute such information to residents' attorneys and parents or legal guardians.

Changes in Final Rule

The final standard includes the proposed requirements and adds sexual harassment to its scope. The final standard also references ''agency'' instead of ''facility.''

Comments and Responses

Comment. A State association of juvenile justice agencies commented that the requirement to distribute information on reporting to the residents' attorneys and their parents or legal guardians would significantly increase postage expenses and suggested instead that the information could be posted on a facility's Web site.

Response. This standard does not require mailings. The agency may, in its discretion, make such information readily available through a Web site, postings at the facility, printed pamphlets, or other appropriate means.

Comment. Some advocacy groups for juveniles recommended adding other family members to the list of people who will receive this information, because it is common for youth in juvenile facilities to have been raised by grandparents or other family members.

Response. The Department encourages facilities to provide notice to other family members at its discretion, but believes that requiring the provision of such notice to parents and legal guardians, plus attorneys, is sufficient for the purposes of a national standard.

Comment. Some advocacy organizations recommended adding sexual harassment to this standard.

Response. Because sexual harassment can lead to further abusive behavior, the Department agrees that it is appropriate to allow third parties to report incidents of sexual harassment, as well as sexual abuse, and has made this change.

Staff and Agency Reporting Duties (§§ 115.61, 115.161, 115.261, 115.361)

Summary of Proposed Rule

The standard contained in the proposed rule required that staff be trained and informed about how to properly report incidents of sexual abuse while maintaining the privacy of the victim. The proposed standard also required that staff immediately report (1) Any knowledge, suspicion, or information regarding incidents of sexual abuse that take place in an institutional setting, (2) any retaliation against inmates or staff who report abuse, and (3) any staff neglect or violation of responsibilities that may have contributed to the abuse. The proposed standard also required that the facility report all allegations of sexual abuse to the facility's designated investigators, including third-party and anonymous reports.

Changes in Final Rule

The final standard includes several small changes. In paragraph (a), the staff reporting requirements have been expanded to add sexual harassment, in addition to sexual abuse. This paragraph no longer refers to incidents that occur in an ''institutional setting,'' but rather refers to incidents that occurred in a ''facility, whether or not it is part of the agency.'' In §§ 115.61(e), 115.261(e), and 115.361(f), the final standard requires that the facility report all allegations of sexual harassment, as well as sexual abuse, to the facility's designated investigators.

In paragraph (b) of §§ 115.61, 115.161, and 115.261, and in paragraph (c) of § 115.361, the Department has clarified the exception that allowed staff to reveal information relating to a report of sexual abuse to ''those who need to know, as specified in agency policy, to make treatment, investigation and other security and management decisions.'' The Department has replaced ''those who need to know'' with ''to the extent necessary'' in order to clarify that staff should not share information relating to a sexual abuse report unless necessary for the limited purposes listed in the rule.

In §§ 115.61(c) and 115.261(c), the final standard requires medical and mental health practitioners to inform inmates and residents of ''the limitations of confidentiality,'' as well as of their duty to report.

For precision and consistency, the Department has qualified ''victim'' with ''alleged'' in §§ 115.61(d), 115.161(c), 115.261(d), and 115.361(d).

Finally, the Department has made several changes to § 115.361(e)(3). The final standard no longer requires that courts retaining jurisdiction over a juvenile be notified of any allegations of sexual abuse. Rather, it requires that, where a court retains jurisdiction over an alleged juvenile victim, the juvenile's attorney or other legal representative of record be notified within 14 days of receiving the allegation.

Comments and Response

Comment. Several commenters recommended that the standard apply to reports relating to sexual harassment as well as sexual abuse.

Response. Sexual harassment can be a predictor of and precursor to sexual abuse, and should be brought to the attention of agency and facility leadership who can determine the appropriate response, if any. The final standard therefore mandates that staff be required to report any knowledge, suspicion, or information regarding an incident of sexual harassment that occurred in a facility, retaliation against inmates or staff who reported such an incident, and any staff neglect or violation of responsibilities that may have contributed to an incident of sexual harassment. In addition, the final standard requires that facilities report allegations of sexual harassment to their designated investigators.

Comment. A State juvenile justice agency noted that the phrase ''institutional setting'' is undefined and recommended replacing it with ''facility.''

Response. The Department agrees, and has changed §§ 115.61(a), 115.261(a), and 115.361 to clarify that staff must report any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the agency.

Comment. Several commenters requested that the standard allow for greater confidentiality between inmates and medical and mental health staff. A State child services agency observed that the requirement that clinicians disclose their duty to report before providing services could have a chilling effect on youth's willingness to report, and may prevent necessary investigation and treatment. An advocacy group recommended that the standards afford inmates an opportunity to speak confidentially with medical and mental health staff about sexual abuse. Other advocacy groups recommended removing the requirement under §§ 115.61(c), 115.161(c), and 115.261(c) that medical and mental health practitioners report sexual abuse unless otherwise precluded by State or Federal law. Instead, these commenters would

require practitioners to determine whether, consistent with Federal, State, or local law and the standards of their professions, they are required to report sexual abuse and to disclose these reporting requirements to patients. In addition, these groups requested that the standards compel providers to inform patients of any duty to report, as well as the limits of confidentiality, both at the initiation of services ''and each time the practitioner makes the determination that he or she is required or permitted to breach confidentiality.'' Finally, these organizations would add language requiring that the agency specify in a written policy the extent of health care providers' obligations to report sexual abuse.

Response. The Department agrees with commenters that it is essential that victims of sexual abuse feel comfortable seeking medical and mental health care services, and recognizes that some individuals may choose not to do so upon learning of their provider's duty to report. However, it is also critical that incidents of sexual abuse be brought to the attention of facility and agency staff to enable the appropriate response measures detailed elsewhere in these standards. The Department has therefore maintained the reporting requirement for medical and mental health practitioners, unless otherwise precluded by law. Because this language is preserved, a requirement that the agency specify in a written policy the extent of health care providers' obligations to report sexual abuse is unnecessary. The Department has, however, accepted the commenters' recommendation that practitioners be required to inform patients of ''the limitations of confidentiality,'' as well as of the practitioners' duty to report, in order to emphasize that, while inmates should never be discouraged from reporting abuse, they must understand that correctional medical and mental health practitioners cannot ensure complete confidentiality.

Comment. Advocates also recommended adding language to §§ 115.61(b), 115.161(b), and 115.261(b) to clarify that personnel who need to receive information related to a sexual abuse report in order to make treatment, investigation, and other security and management decisions shall receive only the information necessary for them to perform their job functions safely and effectively. These commenters stated that the fact that a staff member needs some information about a sexual abuse report does not mean that all such information must, or should, be shared.

Response. The Department agrees that it is important to limit, to the extent possible, the information shared relating to a sexual abuse report. An individual who needs to know certain information relating to a sexual abuse report should receive only the information necessary to make treatment, investigation, and other security and management decisions—and no more. The Department has therefore replaced the phrase ''other than those who need to know'' under §§ 115.61(b), 115.161(b), 115.261(b), and 115.361(c) with ''other than to the extent necessary.'' This revision makes clear that the standard requires facilities to prohibit the sharing of any more information than is necessary to make treatment, investigation, or other security and management decisions.

Comment. One State correctional agency recommended clarifying that the facility head is the person responsible for ensuring that all allegations of sexual abuse, including third-party and anonymous reports, are reported to appropriate investigative staff.

Response. The Department does not believe clarification is necessary. To the extent the facility head is responsible for all facility operations, he or she is responsible for ensuring that allegations are reported appropriately. The facility head may, of course, delegate responsibilities to other supervisory staff who ultimately report to the facility head.

Comment. An inmate and an advocacy organization recommended that agencies be required to take disciplinary action against staff who do not report their knowledge, suspicion, or information relating to sexual abuse.

Response. The Department agrees that discipline may be warranted in such contexts, but believes that is adequately addressed under §§ 115.76, 115.176, 115.276, and 115.376, which govern disciplinary sanctions for staff. That standard provides, in paragraph (a), that ''[s]taff shall be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies.''

Comment. A State office of juvenile justice suggested replacing ''promptly'' with ''immediately'' under § 115.361(e)(1), because ''promptly'' is ambiguous and subject to interpretation.

Response. The Department trusts that facilities will accurately interpret ''promptly'' to mean ''without delay.''

Comment. One commenter recommended that States pursue and investigate allegations of violence against children through the relevant agency, such as child welfare agencies, that investigate analogous allegations in the community.

Response. Each State has its own reporting system for allegations of child abuse and neglect, and the final standard requires agencies and staff to comply with the State's child abuse reporting laws. The final standard allows States appropriate discretion in determining which agency conducts the investigation; a bright-line rule requiring a child welfare agency to conduct the investigation would not necessarily ensure that investigations are conducted optimally.

Comment. Several commenters raised concerns about § 115.361(e)(3). State juvenile justice agencies urged clarification that notice to the court is required only where the court retains jurisdiction over an alleged juvenile victim, rather than jurisdiction over an alleged juvenile perpetrator, in order to avoid undermining the alleged perpetrator's due process rights. The same commenters questioned the value of court notification of unsubstantiated allegations. One agency asked whether notice to a juvenile's attorney is required; an advocacy group recommended that such notification be required to facilitate post-dispositional representation.

Response. The final standard clarifies that the notification requirement in § 115.361(e)(3) applies only to alleged victims, not alleged perpetrators. The Department agrees that where a court retains jurisdiction over an alleged juvenile victim, notifying the juvenile's attorney or other legal representation of record of the allegation is appropriate, and has added this requirement. Given this revision, the Department concludes that court notification is no longer necessary. The Department has therefore replaced the court notification requirement under § 115.361(e)(3) with a requirement that, where a juvenile court retains jurisdiction over an alleged juvenile victim, the facility must report an allegation of sexual abuse to the juvenile's attorney or other legal representative of record within 14 days of receiving the allegation.

Comment. A coalition of juvenile advocacy organizations proposed revising the parent/guardian notification exception in § 115.361(e)(1) from ''unless the facility has official documentation showing the parents or legal guardians should not be notified'' to ''unless the facility has official documentation of parental termination, or has notice of other circumstances related to a youth's physical or emotional well-being which indicate that parents or legal guardians should not be notified.''

Response. The Department concludes that requiring ''official documentation''

appropriately defines the scope of agency discretion, and helps ensure that decisions will be objective and not influenced by a desire to withhold information that could reflect poorly upon the facility.

Comment. A number of advocates expressed concern that the proposed standard fails to provide guidance regarding age of consent laws as they relate to how juvenile facilities should handle the reporting of incidents of voluntary sexual contact between residents.

Response. The Department believes these concerns are addressed under the staff training requirements of § 115.331, which requires specific training on, among other topics, distinguishing between consensual sexual contact and sexual abuse between residents, relevant laws regarding the applicable age of consent, and how to comply with relevant laws related to mandatory reporting of sexual abuse to outside parties.

Agency Protection Duties (§§ 115.62, 115.162, 115.262, 115.362)

The Department has added this standard, which did not appear in the proposed rule, in order to make explicit what was implicit in the proposed rule: That an agency must act immediately to protect an inmate whenever it learns that he or she faces a substantial risk of imminent sexual abuse.

Reporting to Other Confinement Facilities (§§ 115.63, 115.163, 115.263, 115.363)

Summary of Proposed Rule

The standard contained in the proposed rule (numbered as §§ 115.62, 115.162, 115.262, and 115.362) required that a facility that receives an allegation that one of its inmates was sexually abused at another facility must inform that other facility of the allegation within 14 days. The proposed standard also required the facility receiving the information to investigate the allegation.

Changes in Final Rule

The Department has made several small changes to this standard. In order to ensure that facilities report allegations promptly, the Department has removed reference to the 14-day timeframe in paragraph (a) and has added a new paragraph (b) requiring that such notification be provided as soon as possible, but no later than 72 hours after receiving the allegation. The final standard no longer requires that notification be in writing.

In paragraph (a), the Department has removed the word ''central'' from the phrase, ''the head of the facility or appropriate central office of the agency.'' In the paragraph formerly designated as (b), now designated as (d), the Department has replaced ''central office'' with ''agency office.''

The Department intends for all facilities, including community confinement facilities, to report allegations of sexual abuse occurring at any other facility. Accordingly, in § 115.263, the Department has replaced the phrase ''while confined at another community corrections facility'' with ''while confined at another facility.''

In § 115.163, the Department has replaced the phrase ''while confined at another facility or lockup'' with ''while confined at another facility,'' to clarify that the definition of facility includes lockups.

Comments and Responses

Comment. Numerous commenters, including both advocacy groups and correctional agencies, recommended shortening the 14-day timeframe. Several commenters suggested replacing ''Within 14 days of * * *'' with ''Immediately upon * * *'' One advocacy group recommended requiring that verbal notice be provided within one business day, followed by notice in writing within three business days. However, one county probation department recommended extending the timeframe by allowing for a written report within 30 days, noting that there may be occasions where the initial fact-gathering takes additional time, especially if the complaint is against the facility manager.

Response. The Department is persuaded that a 14-day timeframe for reporting to other facilities is too long, and that facilities should be required to report allegations of sexual abuse occurring at other facilities to those facilities as soon as possible to encourage and facilitate a prompt investigation. The Department has therefore revised the standard to require that facilities provide notification as soon as possible, but no later than 72 hours after receiving an allegation. Because written notification may not be as prompt as other means of notification, the Department has removed the requirement that notification be in writing. Facilities are encouraged, however, to document such notification in writing as a supplement to other notification.

Comment. Several commenters expressed concern about the logistics of the notification requirement in paragraph (a). A juvenile detention center and an association of juvenile justice administrators remarked that they would not necessarily be able to identify the appropriate investigative staff at the other facility, and did not believe they should have to attempt to do so. A county sheriff's office suggested clarifying that notification be made to the other facility's PREA coordinator.

Response. Commenters' confusion about whom to contact may stem from the reference to the ''appropriate central office.'' The Department has therefore removed the term ''central'' from the phrase ''appropriate central office of the agency'' in paragraph (a), and has replaced ''central'' with ''agency'' in paragraph (c). The Department has also removed the word ''central'' from § 115.61(e)(1).

The Department does not expect facilities to be able to identify the appropriate investigative staff, especially at facilities operated by other agencies. Where a facility is uncertain about whom to contact, it may simply contact the facility head.

Staff First Responder Duties (§§ 115.64, 115.164, 115.264, 115.364)

Summary of Proposed Rule

The standard contained in the proposed rule (numbered as §§ 115.63, 115.163, 115.263, and 115.363) set forth staff first responder responsibilities, recognizing that staff must be able to adequately counsel victims while maintaining security and control over the crime scene so that any physical evidence is preserved until an investigator arrives. Specifically, the standard required that the first responder separate abuser and victim, seal and preserve any crime scene, and request that the victim not take any actions that could destroy physical evidence. Where the first staff responder is not a security staff member, the proposed standard required that the responder be required to request that the victim not take any actions that could destroy physical evidence, and then notify security staff.

Changes in Final Rule

The Department has made several clarifying changes to this standard. The Department has removed the phrase ''within a time period that still allows for the collection of physical evidence'' from paragraph (a) and added language to paragraphs (a)(3) and (a)(4) stating: ''If the abuse occurred within a time period that still allows for the collection of physical evidence.''

The Department has replaced ''seal and preserve any crime scene'' in paragraph (a)(2) with ''preserve and protect any crime scene,'' which is more

appropriate for non-law-enforcement staff members, and has clarified that any evidence must be preserved until appropriate steps can be taken to collect it. In paragraph (a)(3), the Department has clarified that victims must be instructed to avoid actions that could destroy physical evidence, such as urinating or defecating, only where appropriate given the incident alleged. The Department has also added a new paragraph (a)(4), which requires the responder to ensure that the abuser not take any actions that could destroy physical evidence.

Finally, the Department has clarified that the standard applies after learning ''of an allegation'' that an inmate was sexually abused, and, as elsewhere in the final standards, has qualified ''victim'' with ''alleged.''

Comments and Responses

Comment. Two advocacy groups expressed concern over the phrase ''within a time period that still allows for the collection of physical evidence,'' noting that physical evidence may persist for a long time and urging that staff assume that evidence may still be available in all cases.

Response. The Department agrees that paragraph (a)(1), which requires the first responder to separate the alleged victim and the alleged abuser, and paragraph (a)(2), which requires that any crime scene be protected until appropriate steps can be taken to collect any evidence, should not be contingent upon the amount of time that has passed between the alleged incident of sexual abuse and the allegation. However, the Department remains of the view that it is appropriate to request that the alleged victim, and ensure that the alleged abuser, not take certain actions—such as brushing teeth, urinating, or drinking—only when the abuse occurred within a time period that still allows for the collection of physical evidence. Accordingly, the Department has removed the phrase ''within a time period that still allows for the collection of physical evidence'' from paragraph (a) and has added comparable language to paragraphs (a)(3) and (a)(4).

Comment. An inmate recommended that the final standard require that first responders make arrangements to have the victim transported within 4–6 hours of notification for screening, evidence collection, and treatment for sexually transmitted diseases.

Response. The Department agrees that it is critical that victims receive emergency medical care after an incident of sexual abuse, but believes that this need is adequately addressed under §§ 115.82, 115.182, 115.282, and 115.382.

Comment. A State juvenile justice agency recommended that § 115.364(c) remove smoking from the list of activities that victims should be requested to avoid post-incident. The commenter suggested that references to smoking would be inapplicable in juvenile facilities.

Response. Because juveniles are sometimes able to smuggle contraband cigarettes into facilities, the Department has retained language requiring first responders to request alleged juvenile victims and abusers not to take any actions that could destroy physical evidence, including smoking.

Comment. A county juvenile justice agency suggested that this standard conflicts with § 115.351(e), which requires agencies to provide a method for staff to privately report sexual abuse and sexual harassment of residents. The commenter inquired whether a staff member could choose to abandon the responsibilities outlined in this standard and privately report the matter instead.

Response. The requirement that agencies provide a method for staff to privately report sexual abuse and sexual harassment of residents is consistent with the staff first responder duties outlined in this standard. By ''first responder,'' the Department means the first security staff member to respond to a report of sexual abuse. The first responder need not be the same staff member who initially reports the allegation. For example, if a staff member privately reports alleged sexual abuse to an investigator pursuant to §§ 115.51, 115.151, 115.251, or 115.351, the investigator would then initiate protocols for responding to the allegation, including assigning appropriate staff to fulfill the requirements set out in §§ 115.64, 115.164, 115.264, and 115.364.

Coordinated Response (§§ 115.65, 115.165, 115.265, 115.365)

Summary of Proposed Rule

The standard contained in the proposed rule (numbered as §§ 115.64, 115.164, 115.264, and 115.364) required a coordinated response among first responders, medical and mental health practitioners, investigators, and facility leadership whenever an incident of sexual abuse occurs.

Changes in the Final Rule

The final standard requires the development of a written institutional plan to coordinate responses.

Comments and Responses

Comment. NPRM Question 25 asked whether the proposed standard provided sufficient guidance as to how compliance would be measured. Many commenters, including both agency commenters and advocacy organizations, suggested that having a written plan would be a good way to assess compliance. Other suggestions included documentation of responses or meeting minutes.

Response. After reviewing the responses to this question, the Department concludes that requiring a written plan would be the simplest and most effective way to document compliance, and has revised the standard accordingly.

Comment. Former members of the NPREC recommended that specific details be added to the standard, such as a list of actions to be coordinated, and that victim advocates be included where the victim is a juvenile.

Response. The Department believes that it is not necessary to specify the set of actions to be coordinated. As a general guide to ensuring that the victim receives the best possible care and that investigators have the best chance of apprehending the perpetrator—and as noted in the discussion of this standard in the NPRM—the Department recommends, but does not mandate, coordination of the following actions, as appropriate: (1) Assessing the victim's acute medical needs, (2) informing the victim of his or her rights under relevant Federal or State law, (3) explaining the need for a forensic medical exam and offering the victim the option of undergoing one, (4) offering the presence of a victim advocate or a qualified staff member during the exam, (5) providing crisis intervention counseling, (6) interviewing the victim and any witnesses, (7) collecting evidence, and (8) providing for any special needs the victim may have. The use of victim advocates is discussed in response to the comments on § 115.21 and its counterparts.

Comment. Other advocate commenters recommended that the Department specifically require formal coordinated response teams and that the written plan include a specific list of staff positions that make up the teams and their duties.

Response. While facilities are encouraged to formalize the composition of their response teams, the Department believes that it is not necessary to mandate a specific list of staff positions and duties, which may change based upon experience and personnel adjustments.

Comment. Many agency commenters supported the standard, but some expressed concerns. One agency commenter suggested that the eight actions to be coordinated might fall exclusively within the purview of the outside criminal investigating agency.

Response. This standard would not require any agency to take actions outside the scope of its own authority, but only to coordinate with all responders involved.

Comment. Another agency commenter requested a definition of ''first responder.''

Response. The Department intends for this term to have its usual meaning: the staff person or persons who first arrive at the scene of an incident.

Comment. One correctional agency stated that the use of a sexual assault response team should be a recommendation rather than a mandate.

Response. As noted in the NPRM, this standard was modeled after coordinated sexual assault response teams (SARTs), which are widely accepted as a best practice for responding to rape and other incidents of sexual abuse. However, whether a facility formally designates its responders as a SART is at its discretion. As noted in the NPRM, agencies are encouraged to work with existing community SARTs or may create their own plan for a coordinated response.

Comment. In response to NPRM Question 25, which asked whether this standard provided sufficient guidance as to how compliance would be measured, many commenters, including agency commenters and advocacy organizations, suggested that the existence of a written plan should constitute compliance. Other suggestions recommended using documentation of responses or meeting minutes as proof of compliance.

Response. The final standard requires facilities to develop a written institutional plan to coordinate responsive actions. An auditor will measure compliance by ensuring that a facility has such a plan in place and that the plan is sufficient to ensure a coordinated response. For example, the auditor will assess whether the plan includes appropriate personnel or whether additional facility staff should be involved.

Preservation of Ability To Protect Inmates From Contact With Abusers (§§ 115.66, 115.166, 115.266, 115.366)

Summary of Proposed Rule

A paragraph within a standard contained in the proposed rule (numbered as §§ 115.65(d), 115.165(d), 115.265(d), and 115.365(d)) prohibited agencies from entering into or renewing any collective bargaining agreements or other agreements that limit the agency's ability to remove alleged staff abusers from contact with victims pending an investigation.

Changes in Final Rule

The final rule breaks out this provision as a separate standard, and strengthens the standard by (1) covering the agency's ability to limit contact with any inmate, not only alleged victims; and (2) extending the period of time within which the agency may remove staff from contact with victims to include the pendency of a determination of whether and to what extent discipline is warranted. In addition, the final standard extends to any government agency negotiating collective bargaining agreements on the correctional agency's behalf, in recognition of the fact that correctional agencies often do not conduct their own collective bargaining.

The final standard adds language to clarify that this standard is not intended to restrict agreements that govern the conduct of the disciplinary process or that address whether a no-contact assignment that is imposed pending the outcome of an investigation shall be expunged from or retained in the staff member's personnel file following a determination that the allegation of sexual abuse is not substantiated.

Comments and Responses

Comment. One county sheriff's office suggested that this provision be converted into a separate standard.

Response. The Department agrees that it is more appropriate to treat this requirement as a separate standard, as it is a precursor to the requirement in § 115.67 that the agency take protective measures against retaliation.

Comment. Two State correctional agencies and a county sheriff's office commented that correctional agencies typically are not responsible for negotiating employee contracts.

Response. The Department has revised the standard to apply to any governmental entity responsible for collective bargaining on an agency's behalf.

Comment. One advocacy group recommended amending the proposed standard to make clear that agencies may not enter into or renew contracts with private prison companies that limit the agency's ability to remove the alleged staff abusers from contact with victims pending an investigation.

Response. While the standard emphasizes collective bargaining agreements, the standard also expressly includes any ''other agreement that limits the agency's ability to remove alleged staff abusers from contact with inmates pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted.'' The Department intends the standard to preclude agencies from entering into any agreements that would limit the agency's ability to place alleged staff abusers on no-contact status during the investigatory or disciplinary process.

Comment. One sheriff's office predicted that this standard will limit collective bargaining agreements.

Response. The Department does not believe that this standard will impede agencies and unions from reaching agreements. To the extent that it does, such an (unlikely) outcome is necessary in order to ensure that alleged staff abusers are kept out of contact with alleged victims.

Comment. A State juvenile justice agency recommended that the contract language in collective bargaining agreements include the following specific language: ''prohibit alleged staff abusers from contact with residents pending the results of an investigation or placing a staff abuser on administrative leave pending the results of the investigation.''

Response. The Department does not find it necessary to require agencies to adopt specific contract language in order to meet their obligations under this standard.

Comment. A legal services organization asserted that the proposed standard would be ineffective because it aimed only at preserving agencies' ability to protect inmates from contact with abusers pending an investigation. In the commenter's view, investigations are often little more than whitewashes and only a small fraction of complaints are substantiated. Moreover, the commenter asserted that corrections officials will still claim that they cannot remove staff from a bid position unless an arbitrator agrees with their position. The commenter recommended that the standard require facilities to prevent contact between staff and an inmate when the administrator has an objectively reasonable belief that the staff member poses a risk to the inmate's safety. If the facility cannot do so because of an employment contract, the commenter recommended that the agency be required to take all legal steps to re-negotiate that contract during its term and, at a minimum, be directed not to enter again into such a contract.

Response. Upon reconsideration, the Department concludes that the proposed

standard was insufficiently broad in that it applied only ''pending an investigation.'' In addition, the proposed standard did not appropriately address agencies' ability to provide such protection to all inmates. The Department has therefore extended the standard to prohibit agencies, or governmental entities negotiating on the agency's behalf, from entering into or renewing agreements that limit the agency's ability to remove alleged staff abusers from contact with any inmate pending the outcome of an investigation or a disciplinary determination.

This standard does not mandate that an agency take any specific action against alleged staff abusers; rather, it requires that the agency not tie its hands by entering into a collective bargaining agreement that limits the agency's ability to remove a staff member from a post that involves contact with inmates, as a prophylactic measure, while the agency determines what happened and what measure of discipline is warranted. An agency may determine, consistent with the standard, that it is best to decide on a case-by-case basis, taking into account the gravity and credibility of the allegations, whether to place a staff member in a no-contact status pending such determinations. The Department notes that placing staff accused of sexual misconduct or other serious inmate abuse on no-contact status is a common practice in many facilities and is consistent with best practices. This is particularly true in the context of juvenile justice facilities, where it would be extremely unusual to permit staff accused of serious resident abuse to continue supervising residents pending the outcome of an administrative assessment and, if appropriate, an internal or criminal investigation.

This standard is limited in scope in that it does not purport to govern agreements regarding the conduct of the disciplinary process, as long as such agreements are consistent with §§ 115.72, 115.172, 115.272, and 115.372, which forbid imposition of a standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated, and with §§ 115.76, 115.176, 115.276, and 115.376, which generally govern disciplinary sanctions for staff and which provide that termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual abuse. In addition, the standard does not restrict entering into agreements that address whether and in what form the record of the staff member's no-contact assignment will be retained in the employee's personnel file if the allegations against the employee are not substantiated.

The Department declines to impose further restrictions on the use of arbitration in discipline determinations. What is crucial is establishing proper ground rules to govern the disciplinary process, pursuant to §§ 115.72, 115.172, 115.272, and 115.372, and §§ 115.76, 115.176, 115.276, and 115.376, and ensuring that the agency has the ability to take prophylactic action while the disciplinary process runs its course. With those conditions in place, the Department does not believe that the final standards need restrict the use of arbitrators to review factual findings or disciplinary determinations in order to ensure that the interests of inmates are protected.

Agency Protection Against Retaliation (§§ 115.67, 115.167, 115.267, 115.367)

Summary of Proposed Rule

The standard contained in the proposed rule (numbered as §§ 115.65, 115.165, 115.265, and 115.365) required that the agency protect all inmates and staff from retaliation for reporting sexual abuse or for cooperating with sexual abuse investigations, in recognition of the fact that retaliation for reporting instances of sexual abuse and for cooperating with sexual abuse investigations is a serious concern in correctional facilities. The proposed standard required agencies to adopt policies that help ensure that persons who report sexual abuse are properly monitored and protected, including but not limited to providing information in training sessions, enforcing strict reporting policies, imposing strong disciplinary sanctions for retaliation, making housing changes or transfers for inmate victims or abusers, removing alleged staff or inmate abusers from contact with victims, and providing emotional support services for inmates or staff who fear retaliation.

The proposed standard also required that agencies monitor the conduct and treatment of inmates and staff who have reported sexual abuse or cooperated with investigations for at least 90 days to see if there are changes that may suggest possible retaliation by inmates or staff, and act promptly to remedy any such retaliation. In addition, the proposed standard required that monitoring continue beyond 90 days if the initial monitoring conducted during the initial 90-day period indicated concerns that warranted further monitoring.

Changes in Final Rule

In paragraph (a), the final standard specifies that an agency shall ''establish a policy'' to protect against retaliation, ''and shall designate which staff members or departments are charged with monitoring retaliation.''

In paragraph (c), the final standard clarifies that the agency must monitor the conduct and treatment of inmates who have been reported to have suffered sexual abuse, in addition to inmates and staff who have reported sexual abuse directly. The final standard adds language in §§ 115.67(d), 115.267(d), and 115.367(d) requiring that monitoring of inmates include periodic status checks.

In addition, the final standard specifies that an agency need not continue monitoring if it determines that an allegation is unfounded.

The final standard also includes various clarifying changes. In paragraph (b), the phrase ''including housing changes or transfers'' has been changed to ''such as housing changes or transfers,'' and in §§ 115.67(c), 115.267(c), and 115.367(c), ''including any inmate disciplinary reports, housing or program changes'' has been changed to ''[i]tems the agency should monitor include any inmate disciplinary reports * * *'' In §§ 115.67(c), 115.267(c), and 115.367(c), the list of actions that should be considered possible evidence of retaliation now includes examples of retaliation against staff.

Comments and Responses

Comment. A few correctional agencies recommended replacing ''[t]he agency shall protect all inmates and staff who report'' with ''the agency shall reasonably protect'' or ''shall establish an adequate level of protection against retaliation.'' Two advocacy organizations recommended requiring that the agency establish a written policy on retaliation and designate who is responsible for monitoring.

Response. In order to make the requirements of this standard more concrete, the Department has revised this language to require agencies to establish a policy to protect all inmates and staff, including designating which staff members or departments are charged with monitoring retaliation.

Comment. While many correctional agencies expressed general satisfaction with the proposed standard, several expressed concern that the requirement that agencies monitor for 90 days all individuals who have cooperated with an investigation was excessively burdensome, particularly in large prison systems where hundreds of people

could be involved in investigations at any given time. One sheriff's office stated that identifying for monitoring purposes all inmates who have cooperated with an investigation could raise confidentiality concerns.

Commenters offered a range of suggestions for limiting the scope of monitoring requirements. Some correctional agencies recommended that monitoring not be required where allegations are determined to be unfounded; another agency recommended that monitoring not be required either for unfounded or unsubstantiated allegations. Some agency commenters suggested that monitoring be required only of persons who ''materially'' cooperate with investigations, and recommended clarifying that the provision applies to inmates who report abuse during their present term of incarceration. Another agency would limit the monitoring requirement to the inmate or staff member who made the report, or, if the report was made by a third party, to the alleged victim if he or she cooperated with the investigation.

Response. Upon reconsideration, the Department has modified the monitoring requirements in order to focus resources where monitoring is likely to be most important.

First, the Department has removed the requirement that agencies automatically monitor all individuals who cooperate with an investigation. Instead, the final standard requires agencies to take appropriate measures to protect any individual who has cooperated with an investigation and expresses a fear of retaliation. The final standard retains the requirement to monitor inmates and staff who have reported sexual abuse, and adds a requirement to monitor victims who have been reported to have suffered sexual abuse.

Second, the Department has added language terminating the agencies' obligation to monitor if the agency determines that the allegation is unfounded. Monitoring remains appropriate where an agency has classified an allegation as ''unsubstantiated''—which means, as defined in § 115.5, that the investigation produced insufficient evidence to enable the agency to make a final determination as to whether or not the event occurred.

The Department understands the concern that identifying individuals for monitoring may raise confidentiality issues, but believes that this risk can be managed. The Department encourages agencies, in developing their policies, to limit the number of staff with access to the names of individuals under monitoring and to be mindful of situations in which a staff member who poses a threat of retaliation may also be entrusted with monitoring responsibilities.

Comment. Several commenters suggested adding the NPREC's recommended language requiring that the agency discuss any changes in treatment of inmates or staff with the appropriate inmate or staff member as part of its efforts to determine if retaliation is occurring.

Response. The Department agrees that monitoring of inmates who have reported sexual abuse or who have been reported to have suffered sexual abuse should also include periodic status checks, and has revised the standard accordingly.

Comment. A few agencies, joined by the AJA, recommended that the standards account for the physical limitations of smaller jails and juvenile detention centers. The AJA recommended adding language to clarify that housing changes would occur ''to the extent the physical layout of the jail will allow.'' Another commenter suggested substituting ''such as'' for ''including'' in paragraph (b), to account for facilities that cannot make housing changes.

Response. The Department recognizes that, because of space constraints, some facilities will not be able to accommodate housing changes, and may need to employ alternative protection measures. To clarify that the measures included in the standard are examples rather than requirements, the final standard replaces ''including'' with ''such as.''

Comment. Several agency commenters recommended clarifying how staff should be protected from retaliation. One suggested that negative performance reviews or reassignment could indicate retaliation against cooperating staff.

Response. To better clarify what monitoring of staff should entail, the Department has added ''negative performance reviews or reassignments of staff'' to §§ 115.67(c), 115.267(c), and 115.367(c) as examples of conduct or treatment that might indicate retaliation against staff. Of course, these are merely examples; agencies should be mindful that retaliation may be manifested in other ways.

Comment. The Department received numerous responses to NPRM Question 26, which asked whether the standard should be revised to provide additional guidance regarding when continuing monitoring is warranted. Most commenters found the current language sufficient, including many agency commenters. However, several State correctional agencies requested additional guidance. Specific requests included: clarification of what monitoring consists of and how it differs from general monitoring of offenders and staff; examples of what level of monitoring would be acceptable to meet the standard and what incidents would warrant continued monitoring; and detailed training on how to monitor. In addition, an advocacy organization suggested that agencies restart the 90-day clock after each new incident of retaliation; an inmate recommended that monitoring be mandated for eight months; an anonymous commenter proposed that the standard require that monitoring continue until the agency is reasonably certain that retaliation has ceased; and an agency asked whether the 90-day monitoring needed to be documented in any particular way.

Response. In light of the fact that most commenters expressed satisfaction with the level of detail included in this standard, and in order to afford agencies flexibility to develop a monitoring policy consistent with their existing operations and professional judgment, the Department declines to provide a detailed definition of monitoring or to list scenarios in which continuing monitoring would be warranted. However, the Department expects that the final standards' addition of examples of how staff might experience retaliation, as well as the new requirement that monitoring for certain individuals include periodic status checks, will assist agencies in developing their policies to protect against retaliation.

The Department does not find it necessary to specify that a new incident of retaliation must restart the 90-day clock, as the final standard requires agencies to continue monitoring beyond 90 days if the initial monitoring indicates a continuing need. The Department trusts that agencies will recognize that an incident of retaliation indicates a continuing need for monitoring. Finally, in light of the requirement that agencies continue monitoring beyond 90 days if the initial monitoring indicates a continuing need, as well as agencies' concerns about the cost and burden of a monitoring requirement, the Department declines to revise the standard to require agencies to monitor for eight months.

Criminal and Administrative Agency Investigations (§§ 115.71, 115.171, 115.271, 115.371)

Summary of Proposed Rule

The standard contained in the proposed rule required that agencies that conduct their own investigations do so promptly, thoroughly, and objectively. The proposed standard required investigations whenever an allegation of sexual abuse is made, including third-party and anonymous reports, and prohibited the termination of an investigation on the ground that the alleged abuser or victim is no longer employed or housed by the facility or agency. The proposed standard required that investigators gather and preserve all available direct and circumstantial evidence.

The proposed standard required that investigators be trained in conducting sexual abuse investigations in compliance with §§ 115.34, 115.134, 115.234, and 115.334.

To ensure an unbiased evaluation of witness credibility, the standard required that credibility assessments be made objectively rather than on the basis of the individual's status as an inmate or a staff member.

In addition, the proposed standard required that all investigations, whether administrative or criminal, be documented in written reports, which must be retained for as long as the alleged abuser is incarcerated or employed by the agency, plus five years.

Changes in Final Rule

The final standard contains several small changes.

In paragraph (a), the duty to investigate allegations promptly, thoroughly, and objectively has been extended to sexual harassment in addition to sexual abuse.

In paragraph (e) of §§ 115.71, 115.171, and 115.271, and paragraph (f) of § 115.371, the final standard provides that no agency shall require an inmate who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.

In paragraph (f) of §§ 115.71, 115.171, and 115.271, and paragraph (g) of § 115.371, the final standard provides that administrative investigations should endeavor to determine whether staff actions or failures to act ''contributed to'' the abuse, rather than ''facilitated to'' as in the proposed standard.

In paragraph (i) of §§ 115.71, 115.171, and 115.271, the final standard provides that the duty to retain documents applies to ''all written reports referenced in paragraphs (f) and (g),'' rather than ''such investigative records'' as in the proposed standard. The final standard for juvenile facilities makes a similar change in § 115.371(j).

In paragraph (j) of the standard for juvenile facilities, the final standard allows for a shorter retention period for written reports regarding abuse committed by residents where the retention for the time period otherwise required by the standard is prohibited by law.

Comments and Responses

Comment. One commenter expressed concern that the restriction on conducting compelled interviews until prosecutors are consulted failed to account for the fact that it is not always known if a criminal prosecution is a possibility when an investigation begins.

Response. This standard requires consultation with prosecutors before conducting compelled interviews when the quality of existing evidence would support a criminal prosecution. The standard would not prohibit an administrative investigation when evidence does not support a criminal prosecution. If that assessment changes during the course of an administrative investigation due to new evidence, prosecutors should be consulted at that time. In case of doubt at any point in the investigation, prosecutors should be consulted.

Comment. Some advocates suggested strengthening this standard in various ways, including by requiring consultation with prosecutors to determine whether the quality of evidence appears to support criminal prosecution.

Response. While the Department recommends consultations with prosecutors in case of doubt, it is not necessary to require such consultation during all investigations. Agencies usually will be able to determine whether the contours of an incident indicate that criminal wrongdoing may have occurred, and are encouraged to consult with prosecutors in case of doubt.

Comment. Some advocates suggested requiring that a preliminary investigation commence immediately upon receiving an allegation of sexual abuse.

Response. The standard requires investigations to be conducted ''promptly,'' which is intended to emphasize the importance of investigating without delay.

Comment. Some advocates suggested requiring agencies to rely on available, accepted sexual assault protocols.

Response. Section 115.21 requires that agencies responsible for investigating allegations of sexual abuse follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions. Section 115.21 requires that the protocol be adapted from or otherwise based on the Department's SAFE Protocol, or similarly comprehensive and authoritative protocols developed after 2011.

Comment. Some advocates recommended requiring a comprehensive written plan—including a memorandum of understanding—to guide the coordination of administrative and criminal investigations.

Response. In the interest of affording agencies flexibility in implementing these standards, the Department declines to mandate such a plan or memorandum, although it encourages agencies to consider whether doing so will help coordinate its investigatory efforts.

Comment. A number of inmates stressed the importance of the provision requiring that credibility be assessed on an individual basis, as opposed to the person's status as inmate or staff, given that, in their view, agencies inappropriately favor staff over inmates when their statements conflict. One agency commenter recommended that this standard be removed, on the grounds that it is not measurable and constitutes a best practice.

Response. Objective assessments of credibility are crucial in investigations of sexual abuse in correctional settings, especially when abuse by staff is alleged. While this standard is not easily quantifiable, it is quite possible that a blatant failure to abide by it will be readily evident. For example, when an inmate makes an allegation of staff abuse, and there is no objective evidence that the allegation is false, the investigator should attempt to find other avenues to corroborate or disprove the allegation rather than assessing the allegation in a vacuum. In such cases, indications in the investigative file as to whether the investigator interviewed witnesses, reviewed the staff member's disciplinary history, and reviewed the inmate's history of lodging complaints would assist the auditor in determining whether the accuser's status as an inmate compromised the investigation's objectivity.

Comment. An inmate recommended that the standards be amended to allow victims the opportunity to take a

polygraph test to prove the truth of their statements. However, many advocates opposed polygraph testing because it often yields inaccurate results and can be traumatizing for a victim. They also noted that the Department prohibits States receiving grants under the STOP (Services, Training, Officers, Prosecutors) Violence Against Women Formula Grant Program from using polygraph testing for victims of sexual violence. These advocates recommended that the standard be amended to explicitly prohibit polygraph testing for inmates who report abuse.

Response. The Department has amended the standard so that it prohibits agencies from requiring inmates who allege sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation. This requirement corresponds to a similar condition on the receipt of certain VAWA grants awarded by the Department. *See* 42 U.S.C. 3796gg–8. The Department recognizes that polygraph examinations are imperfect assessors of credibility. Given that States are precluded from receiving certain funds if they condition investigations upon the alleged victim's agreement to submit to a polygraph test, the Department concludes that a corresponding requirement is appropriate in the PREA context. However, this does not prohibit the administration of such tests to victims who request them.

Comment. A few inmates recommended that the standard be strengthened by adding language expressly prohibiting staff from attempting to coerce inmates into not reporting sexual abuse.

Response. A prohibition against coercion of inmates is implicit in the standards, including in the requirement in this standard to investigate all inmate accusations of sexual abuse, and in the standard that provides for protection against retaliation.

Comment. A number of advocates recommended that the standard also encompass investigations into allegations of sexual harassment.

Response. The Department agrees that the requirement to investigate allegations promptly, thoroughly, and objectively should apply to allegations of sexual harassment as well, and has amended paragraph (a) accordingly.

Comment. Some stakeholders commented that the use of the word ''facilitated'' in §§ 115.71(f)(1), 115.171(f)(1), 115.271(f)(1), and 115.371(g)(1) appears to require a determination of whether staff acted in a manner that encouraged or directly resulted in the occurrence of the abuse.

Response. The final standard clarifies this provision by replacing ''facilitated'' with ''contributed to.''

Comment. A State correctional agency commented that its administrative investigations determine facts, but do not result in ''findings.''

Response. For clarity, the Department has amended §§ 115.71(f)(2), 115.171(f)(2), 115.271(f)(2), and 115.371(g)(2) to include both investigative ''facts'' as well as ''findings.''

Comment. A number of correctional commenters asserted that the record retention requirements in paragraph (h) of the proposed standard (paragraph (i) in the juvenile standard) conflicted with applicable State or local law, including State or local records retention schedules. One noted that records may not be under the full control of the agencies. In some States, the commenter noted, juvenile records are under the control of the juvenile court and can be purged at the request of the juvenile offender. Another commenter suggested that this requirement would be difficult to implement, as the juvenile facility would not know when or if a person incarcerated in an adult facility is released. A number of such commenters recommended allowing agencies to retain records in a manner consistent with State law. One commenter expressed concern about the cost and administrative burden of maintaining all investigative records beyond the period of employment or incarceration, and recommended that it should suffice to retain the final report. Another recommended that the standard require that such records be kept confidential and not be subject to public inspection under the Freedom of Information Act or similar State laws.

Response. The recordkeeping requirement of this standard, now contained in paragraph (i) (paragraph (j) in the juvenile standard) applies only to records generated pursuant to paragraphs (f) and (g) (paragraphs (g) and (h) in the juvenile standard), which are within the agencies' control. There is no barrier to retaining these records beyond the length of time mandated by this standard if required by State or local regulation (or if the agency chooses to do so for its own reasons). To the extent that State or local laws mandate the disposal of these records within a shorter period, agencies are encouraged to seek revisions of such laws to the extent necessary in order to retain these documents. To reduce potential conflicts, the Department has amended the standard to allow for a shorter retention span when the abuser is a juvenile resident and when retention of records for the time period mandated by the standard is prohibited by law.

The Department does not believe that the requirement of maintaining the records generated pursuant to paragraphs (f) and (g) will prove overly burdensome, especially in light of the clarification in the final standard that only the written reports documenting investigations need be retained.

Finally, the Department lacks the authority to determine whether these records should be subject to public inspection under freedom of information laws, which will depend upon the relevant laws of the jurisdiction in which the custodian of the records is located.

Comment. One agency recommended defining ''State entity'' in § 115.71(k) to make clear to which specific entity this requirement applies.

Response. As noted above, the use of ''State entity'' in this context refers to any division of the State government, as opposed to local government.

Evidentiary Standard for Administrative Investigations (§§ 115.72, 115.172, 115.272, 115.372)

Summary of Proposed Rule

The standard contained in the proposed rule required that agencies not impose a standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse are substantiated.

Changes in Final Rule

The final standard encompasses allegations of sexual harassment.

Comments and Responses

Comment. Correctional agencies and advocates generally supported this standard, though a few agencies expressed uncertainty as to whether it applied to criminal investigations as well as administrative investigations.

Response. As the title of the standard indicates, this standard applies only to administrative investigations.

Comment. Some advocates recommended that sexual harassment be added to this standard, noting that allegations of sexual harassment typically would be dealt with through administrative investigations.

Response. Upon reconsideration, the Department agrees with this recommendation and has amended the standard to include sexual harassment.

Reporting to Inmates (§§ 115.73, 115.273, 115.373)

Summary of Proposed Rule

The standard contained in the proposed rule required that, upon completion of an investigation into an inmate's allegation that he or she suffered sexual abuse in an agency facility, the agency must inform the inmate whether the allegation was deemed substantiated, unsubstantiated, or unfounded. If the agency itself did not conduct the investigation, the proposed standard required that the agency request the relevant information from the investigating entity in order to inform the inmate. The proposed standard further provided that, if an inmate alleges that a staff member committed sexual abuse, the agency must inform the inmate whenever (1) The staff member is no longer posted in the inmate's unit, (2) the staff member is no longer employed at the facility, (3) the staff member has been indicted on a charge related to the reported conduct, or (4) the indictment results in a conviction. The proposed standard did not apply to allegations that have been determined to be unfounded, and did not apply to lockups, due to the short-term nature of lockup detention.

Changes in Final Rule

The final standard adds a requirement that all such notification or attempted notification must be documented. The final standard also expands the requirement to inform the inmate if his or her abuser is indicted or convicted to apply where the abuser is a fellow inmate. In addition, the final standard clarifies that the agency's duty to report to an alleged victim terminates if the victim is released from the agency's custody, and terminates with regard to notifications regarding staff reassignments, departures, indictments, or convictions if the allegation is determined to be unfounded.

Comments and Responses

Comment. Several agency commenters expressed concern with the proposed standard on human resource practice, security, or privacy grounds. These commenters questioned the wisdom of providing written information to victims and third-party complainants given that, in their view, such information could easily become widely known throughout the facility, possibly endangering other inmates or staff.

Response. The Department does not believe that notifying an inmate that a staff member is no longer posted within the unit or facility would imperil other inmates or staff.

Comment. Some agency commenters asserted that privacy laws may restrict the dissemination of certain information about staff members.

Response. The Department does not believe that the disclosure of information referenced in this standard implicates any privacy interests. Importantly, this standard does not require that the facility disclose the reason why the staff member is no longer posted within the inmate's facility or unit. Thus, the facility need not reveal whether the staff member's absence is due to a voluntary departure or an adverse employment action. Indictments and convictions, of course, are public facts in which an employee or former employee has no privacy interest.

Comment. Other agency commenters suggested that gathering this information would impose administrative difficulties, and some recommended that the investigating or prosecuting agency be tasked with informing the inmate about indictments or convictions. One commenter recommended that the information reported to the inmate be limited to information that was publicly available.

Response. It is highly unlikely that an indictment or conviction would result without the agency learning about it. Even so, the standard does not impose any affirmative burden upon agencies to gather information for the purpose of informing inmates. Rather, it requires that the agency inform the inmate whenever ''[t]he agency *learns''* that a staff member has been indicted or convicted on a charge related to sexual abuse within the facility (emphasis added).

Comment. A number of advocates recommended that the standard be amended to provide additional information to inmates. They recommend requiring that the agency, in the case of substantiated claims, inform the victim what the agency has done in response to the abuse, whether administrative sanctions have been imposed, whether the agency has reported the abuse to prosecutors, and the results of any criminal proceeding. These advocates also recommended requiring disclosure to third-party complainants.

Response. The final standard does not incorporate these suggestions. First, while the Department encourages agencies to communicate with victims regarding remedial action taken, it would be an inappropriate intrusion upon agency operations to require agencies to disclose the actions they have taken. Second, disclosing the imposition of administrative sanctions may implicate employees' privacy rights under governing laws. The victim's interests in safety are served by requiring disclosure of whether the staff member is no longer posted on the victim's unit or in the victim's facility, and the victim's interest in justice is served by requiring disclosure of any indictments or convictions. Third, for similar reasons, the Department declines to revise the standard to mandate disclosure of whether the agency has reported the abuse to prosecutors, or of the results of criminal proceedings beyond the fact of a conviction. Fourth, such interests do not support requiring disclosure to third-party complainants, who are not similarly situated to the victim. Of course, agencies may choose to disclose additional information, even if such disclosure is not covered by this standard.

Comment. Advocates recommended requiring documentation, signed by the inmate, that he or she received the required information.

Response. The Department finds merit in the suggestion that such notifications be documented and has incorporated this into the final standard. However, the Department does not believe it is necessary to require that the inmate sign such notifications.

Comment. Some commenters expressed concern that the standard could be read to require that information be reported to the accuser as the investigation unfolds.

Response. The final standard requires an agency to report to an inmate who has alleged sexual abuse when the allegation has been determined to be substantiated, unsubstantiated, or unfounded, if the abuser has been indicted or convicted on a charge related to sexual abuse within the facility, and, if the alleged abuse was committed by a staff member, when the staff member is no longer posted within the inmate's unit or is no longer employed at the facility. While agencies may determine it is prudent to provide an inmate with additional updates if an investigation is prolonged, the standard does not require an agency to provide information during the course of the investigation.

Comment. Some commenters recommended that the standard define ''unfounded'' and ''unsubstantiated.''

Response. Section 115.5 contains definitions of ''unfounded allegation'' and ''unsubstantiated allegation.''

Comment. Some commenters asserted that the terms ''substantiated'' and ''unsubstantiated'' apply only to

administrative investigations and therefore recommended that paragraph (a) be amended to apply only to administrative investigations.

Response. These terms, as defined in the final rule, are applicable to all types of investigations. Indeed, the BJS Survey of Sexual Violence, which for several years has been collecting data from agencies regarding substantiated, unsubstantiated, and unfounded allegations, does not limit its inquiries to administrative investigations.

Comment. Some commenters recommended that staff be required to explain to inmates the meaning of substantiated, unsubstantiated, and unfounded.

Response. The Department believes that the reporting requirement implicitly requires staff to ensure that inmates understand the result of the investigation.

Comment. Other commenters recommended that the Department adopt a standard requiring juvenile facilities to report this information to parents and legal guardians of juvenile victims.

Response. The Department encourages juvenile facilities to share such information with parents and legal guardians in accordance with the facility's general policies regarding communication with parents and legal guardians. However, because the interests implicated in these disclosures most directly impact the victim, the Department declines to require agencies to do so.

Comment. Some advocates recommended requiring notifications analogous to those required by paragraph (c) when the perpetrator is another inmate.

Response. Because staff members exert complete authority over inmates, safety interests compel the notification of inmates regarding the transfer or departure of a staff member. Because fellow inmates lack such authority over other inmates, the Department has chosen not to require similar notification when the perpetrator is another inmate. However, the final standard expands the indictment/conviction notification requirement to cover cases in which the defendant abuser is an inmate.

Comment. One correctional commenter recommended that the standard require only ''reasonable efforts'' to inform an inmate, because the inmate may be released while an investigation is still ongoing and may be difficult to locate.

Response. The final standard states that an agency has no obligation to report to inmates who have been released from its custody.

Comment. A few correctional commenters recommended that this standard exempt allegations that have been determined to be unsubstantiated.

Response. The Department disagrees with this recommendation. By definition, an unsubstantiated allegation is one in which there is insufficient evidence to determine whether or not the event occurred. The possibility that the event occurred justifies the minimal burden of informing the inmate that the staff member is no longer posted within the inmate's unit. In addition, an inmate who is informed that his or her allegation is unsubstantiated may wish to provide, or attempt to obtain, additional evidence that would benefit the investigation.

Disciplinary Sanctions for Staff (§§ 115.76, 115.176, 115.276, 115.376)

Summary of Proposed Rule

The standard contained in the proposed rule provided that staff shall be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies, and that termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual touching.

The proposed standard further provided that sanctions be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories. If a staff member is terminated for violating such policies, or if a staff member resigns in lieu of termination, the proposed standard required that a report be made to law enforcement agencies (unless the activity was clearly not criminal) and to any relevant licensing bodies.

Changes in Final Rule

The final standard provides that termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual abuse, not only sexual touching.

Comments and Responses

Comment. Several advocate commenters stated that termination should be the mandatory sanction for employees that have engaged in sexual abuse, rather than a presumptive sanction.

Response. The Department believes that a change is not warranted, for the reasons stated by the NPREC in the discussion section that accompanied its corresponding standard, labeled as DI–1:

> This standard requires that termination be the ''presumptive'' but not the mandatory sanction for certain types of sexual abuse in recognition of the fact that disciplinary sanctions must be determined on a case-by-case basis. Establishing termination as a presumption places a heavy burden on the staff person found to have committed the abuse to demonstrate why termination is not the appropriate sanction. This presumption also requires that termination should be the rule for the referenced types of sexual abuse, with exceptions made only in extraordinary circumstances.[36]

Comment. A number of agency commenters expressed concern that collective bargaining agreements may limit their ability to assure termination.

Response. The Department is aware that, pursuant to collective bargaining agreements, final decisions regarding termination may rest in the hands of an arbitrator. This standard is intended to govern the sanction sought by the agency, recognizing that, in some circumstances, the agency may not have the authority to make the final determination.

Comment. A large number of commenters across all commenter types requested that the standard be revised to provide that termination shall be the presumptive disciplinary sanction not only for staff who have engaged in sexual touching, but also for staff who have engaged in other types of sexual misconduct such as indecent exposure and voyeurism.

Response. The Department has changed the term ''sexual touching'' to ''sexual abuse.''

Comment. Some advocate commenters expressed concern that the range of discipline contemplated in paragraph (c) was too broad. In addition, one agency commenter suggested that the inclusion of a range of discipline was not consistent with a zero-tolerance policy.

Response. The Department has revised paragraph (c) to make clear that it refers to policy violations that do not constitute sexual abuse. Coupled with the shift from ''sexual touching'' to ''sexual abuse'' in paragraph (b), the final standard draws a line between sexual abuse by staff, for which termination is the presumptive sanction, and other policy violations, for which agencies are afforded discretion to impose discipline as warranted. Such violations may include, for example, a failure to take required responsive

[36] NPREC, *Standards for the Prevention, Detection, Response, and Monitoring of Sexual Abuse in Adult Prisons and Jails*, 47, available at *http://www.ncjrs.gov/pdffiles1/226682.pdf.*

actions following an incident, negligent supervision that led to or could have led to an incident, or willfully ignoring evidence that a colleague has abused an inmate.

Comment. An advocate commenter suggested that the final standard mandate disciplinary sanctions for staff who regularly work on shifts when incidents of sexual abuse occur, noting that ''standing by while assaults happen is a violation of staff responsibility.''

Response. The Department agrees that a staff member's failure to act to prevent sexual abuse merits discipline. However, a blanket rule mandating sanctions for staff who work on shifts when incidents occur would not be appropriate. Rather, a determination whether to impose discipline should be made on a case-by-case basis.

Comment. Commenters in all categories requested that this standard be expanded to include volunteers and contractors.

Response. The final rule adds a new standard, discussed immediately below, to address this concern.

Corrective Action for Contractors and Volunteers (§§ 115.77, 115.177, 115.277, 115.377)

The final rule adds a new standard requiring that an agency or facility prohibit from contact with inmates any contractor or volunteer who engages in sexual abuse. The standard also requires that any incident of sexual abuse be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies. With regard to any other violation of agency sexual abuse or sexual harassment policies by a contractor or volunteer, the new standard requires that the facility take appropriate remedial measures and consider whether to prohibit further contact with inmates.

The wording of this standard takes into account that contractors and volunteers are not employees and thus are not subject to termination or discipline as those terms are typically construed. However, the consequences set forth in this standard parallel the consequences for staff members, with discretion left to agencies and facilities to take appropriate remedial measures commensurate with the nature of the violation.

Disciplinary Sanctions, Interventions, and Prosecutorial Referrals for Inmates (§§ 115.78, 115.178, 115.278, 115.378)

Summary of Proposed Rule

The standard contained in the proposed rule (numbered as §§ 115.77, 115.177, 115.277, and 115.377) mandated that inmates be subject to disciplinary sanctions pursuant to a formal disciplinary process following a finding that the inmate sexually abused another inmate. The standard mandated that sanctions be appropriate for the offense, taking into account the inmate's history and whether any mental disabilities or mental illness contributed to the behavior.

As with sanctions against staff, the proposed standard required that sanctions against inmates be fair and proportional, taking into consideration the inmate's actions, disciplinary history, and sanctions imposed on other inmates in similar situations. The proposed standard also required that the disciplinary process take into account any mitigating factors, such as mental illness or mental disability, and that it consider whether to incorporate therapy, counseling, or other interventions that might help reduce recidivism.

The proposed standard provided that inmates shall not be disciplined for sexual contact with staff without a finding that the staff member did not consent to such contact. The standard further provided that inmates may not be punished for making good-faith allegations of sexual abuse, even if the allegation is not substantiated following an investigation. Finally, the standard provided that an agency must not consider consensual sexual contact between inmates to constitute sexual abuse.

With regard to lockups, which generally do not hold inmates for prolonged periods of time and thus do not impose discipline, the proposed standard required a referral to the appropriate prosecuting authority when probable cause exists to believe that one lockup detainee sexually abused another. If the lockup is not responsible for investigating allegations of sexual abuse, the standard required that it inform the responsible investigating entity. The proposed standard also applied to any State entity or Department of Justice component that is responsible for investigating sexual abuse in lockups.

Changes in Final Rule

The final standard makes clear that it does not limit an agency's ability to prohibit sexual activity among inmates, or to discipline inmates for violating such a prohibition.

Comments and Responses

Comment. A large number of advocate commenters objected to the provision that allowed discipline of inmates for sexual contact with staff ''upon a finding that the staff member did not consent to such contact.'' Commenters criticized this language as easily exploitable by an abusive staff member, who could coerce an inmate into sexual activity and then falsely claim that she or he did not consent to sex with the inmate. Fearing that the language in the proposed standard could discourage inmates from reporting staff sexual abuse, several advocate commenters recommended allowing discipline of inmates for sexual contact with staff only if the inmate used or threatened to use force against the staff member.

Response. As stated in the NPRM, the responsibility for preventing inmate-staff sexual contact presumptively rests with the staff member, due to the vast power imbalance between staff and inmates. Even if it appears that a staff member and an inmate willingly engaged in sexual activity, the very real possibility that the inmate was coerced into doing so militates against automatically disciplining both parties for such behavior. Otherwise, inmates may be reluctant to report being coerced into sexual activity by staff, for fear of discipline. For this reason, the proposed standard required the facility to make a finding that the staff member did not consent, rather than merely taking the word of the staff member.

However, exempting from discipline non-consensual activity that did not involve force or threat of force would tilt too far in the opposite direction. Such a rule would exempt from discipline, for example, a large and muscular inmate who did not use or threaten force but who coerced a physically slight staff member into sexual activity by trapping her in a confined space. Likewise, an inmate who drugged a staff member and sexually abused her while she was unconscious would be immune from discipline. Finally, it is doubtful that the language suggested by advocates would eliminate the risk of false allegations by staff members. A staff member who would falsely allege that he or she did not consent to sexual activity with an inmate could, if this language were adopted, instead falsely assert that the inmate had threatened to use force. For these reasons, the Department rejects this proposed change.

Comment. Many commenters, of various types, expressed confusion over the requirement in the proposed standard that ''[a]ny prohibition on inmate-on-inmate sexual activity shall not consider consensual sexual activity to constitute sexual abuse.'' A number of commenters appeared to interpret the

use of ''consensual'' in the proposed standard as indicating a permissive attitude toward inmates engaging in sexual activity.

Response. The Department did not intend to limit agencies' ability to prohibit or otherwise restrict inmate sexual activity. Rather, the Department meant to ensure that such activity is not automatically classified as ''sexual abuse.'' The Department recognizes that it may be difficult to discern whether sexual activity between inmates is truly consensual; activity that may seem to be voluntary may actually be coerced. Yet it is essential that staff make individualized assessments regarding each inmate's behavior, and not simply label as an abuser every inmate caught having sex with another inmate. The Department has revised this language to make clear that the standard does not limit an agency's ability to prohibit sexual activity among inmates, or to discipline inmates for violating such a prohibition. However, while consensual sexual activity between inmates may be prohibited, it should not be viewed as sexual abuse unless the activity was coerced.

Comment. Many commenters, including advocates and agencies alike, criticized the proposed standard for juveniles as setting an inappropriately punitive tone. Some comments interpreted the proposed standard to require disciplinary sanctions for residents.

Response. Unlike many adult correctional systems, juvenile agencies typically operate on a rehabilitative model, and focus on positive programming and treatment rather than punishment. The Department agrees that juvenile agencies should have discretion as to the types of interventions they find most appropriate in responding to sexually abusive behavior. For example, rather than imposing a disciplinary sanction, the agency might choose to direct the juvenile perpetrator to a sex offender treatment program aimed at rehabilitation.

In consideration of these concerns, § 115.378 is now titled ''Interventions and disciplinary sanctions for residents.'' Further, the Department has reworded § 115.378 to make clear that the standard does not require any particular type of intervention or discipline, and that juvenile agencies retain discretion to determine the most appropriate response. When agencies choose to impose discipline, the sanction must be commensurate with the nature of the offense and must take into consideration other relevant factors.

Comment. Advocate commenters strongly objected to the lack of restrictions on the use of isolation in disciplining juveniles in the proposed standards. Some specifically requested a 72-hour time limit on the use of isolation in juvenile facilities.

Response. The final standard requires that residents in isolation shall not be denied daily large-muscle exercise or access any to legally required education programming or special education services. In addition, such residents must receive daily visits from a medical or mental health care clinician, as well as access to other programs and work opportunities to the extent possible.

The Department did not incorporate a time limit into the final standard, recognizing that agencies must balance the well-being of sexually abusive youth with that of other youth in its custody. In rare cases, a facility may find it necessary to isolate youth beyond 72 hours due to safety and security concerns. However, isolated youth remain subject to the protections discussed above. The Department encourages facilities to minimize their reliance on isolation for juveniles to the greatest extent possible.

Comment. Advocate commenters also objected to language in § 115.378(d) of the proposed standards regarding a facility's ability to limit access to programming for abusers who refuse to participate in therapy, counseling or interventions designed to address or correct underlying reasons for the abuse.

Response. In recognition of the fact that some sex offender treatment programs require admission of the underlying act, and that such an admission could have consequences for any subsequent criminal case, the Department believes that youth should not be punished for failing to participate. Accordingly, the Department has revised § 115.378(d) to clarify that a facility may limit an abuser's access to rewards-based management or behavior-based incentives due to their failure to participate in therapeutic interventions, but may not limit access to general programming and education. This revision is consistent with a rehabilitative approach to juvenile corrections.

Comment. Many advocate commenters expressed concern with the Department's lack of guidance to juvenile agencies regarding adherence to and interpretation of State age of consent laws and mandatory reporting requirements.

Response. The Department believes it has appropriately addressed these concerns by expanding and specifying the training requirements in § 115.331, which now mandates training on how to distinguish between abusive and non-abusive sexual contact between residents and on how to comply with relevant age of consent laws and mandatory reporting. The Department intends for these standards to be read in conjunction with, rather than to supersede, existing State laws regarding mandatory reporting and age of consent.

Medical and Mental Health Screenings (§§ 115.81, 115.381)

Summary of Proposed Rule

The standard in the proposed rule required that inmates be asked about any prior history of sexual victimization and abusiveness during intake or classification screenings. The proposed standard further required that inmates be offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening. The proposed standard also limited the inquiry required in jails by not requiring an inquiry about prior sexual abusiveness.

The proposed standard did not apply to lockups, given the relatively short time that they are responsible for inmate care, or to community confinement facilities, which do not undertake a similar screening process.

Changes in Final Rule

The final standard no longer requires that facilities make these inquiries during intake screenings. Rather, the Department has replaced this language with a reference to the screening conducted pursuant to §§ 115.41 and 115.341. The Department has also revised the standard to require that inmates be offered a follow-up meeting when screening indicates that they have experienced prior sexual victimization or perpetrated sexual abuse, rather than only when the inmate discloses such information. Finally, for clarity, the Department has changed ''follow-up reception'' to ''follow-up meeting.''

Comments and Responses

Comment. Numerous commenters, including correctional agencies and advocacy organizations, asserted that the screening requirements under §§ 115.81(a) and 115.381(a) were duplicative of—and inconsistent with—the screening requirements under §§ 115.41 and 115.341. These commenters requested that the two standards be consolidated.

Response. The Department is persuaded that the separate screening requirement under §§ 115.81(a) and 115.381(a) is unnecessary in light of

§§ 115.41 and 115.341. Accordingly, the Department has replaced this screening requirement with a reference to screenings conducted pursuant to §§ 115.41 and 115.341.

Comment. Several commenters criticized the 14-day timeframe for a follow-up meeting where there is an indication of prior sexual victimization or abusiveness. Several advocates and a State council on juvenile detention suggested that 14 days was too long for victims and abusers to wait for treatment; some commenters requested that, at a minimum, the timeframe be shortened in juvenile facilities because of the urgency of addressing these issues among juveniles and because of the shorter average length of stay at juvenile facilities. A State juvenile justice agency recommended that, for youth in short-term facilities, the standard mandate a follow-up meeting within 10 days of release from the facility or within 14 days of intake for youth that remain in the facility. A State correctional agency recommended that treating victims receive priority, and criticized the proposed standard for providing the same 14-day timeframe for victims and abusers, without distinguishing between the two.

Finally, some juvenile justice agencies asserted that the 14-day timeframe under §§ 115.81 and 115.381 is inconsistent with the requirement under §§ 115.83 and 115.383 that facilities conduct a mental health evaluation of all known abusers within 60 days of learning of such abuse history.

Response. The Department agrees that an inmate with a history of victimization or abuse should receive a follow-up meeting with a health care practitioner as soon as possible. However, some facilities, particularly smaller facilities, have limited access to medical and mental health practitioners. While the Department encourages facilities to arrange for follow-up meetings as soon as possible, the final standard preserves the 14-day deadline in order to accommodate these staffing challenges.

The requirement that prisons provide *follow-up meetings* within 14 days for inmates whose intake screenings indicate prior abusiveness is distinct from—and consistent with—the requirement that prisons attempt to conduct mental health *evaluations* within 60 days. The follow-up meeting is intended to emphasize immediate mental health needs and security risks, while the evaluation is a comprehensive mental health assessment intended to inform future treatment plans.

Comment. A State correctional agency argued that it is appropriate to require facilities to offer a follow-up meeting to an inmate with a history of victimization but that it should be left to the facility's discretion to determine whether to offer a follow-up meeting to an inmate whose screening indicates prior abusiveness.

Response. The Department believes that the potential for reducing future incidents of sexual abuse and creating an improved overall sense of safety within a facility justifies the burden of requiring the facility to offer a follow-up meeting to an inmate whose screening indicates prior abusiveness. However, as reflected in §§ 115.83, 115.283, and 115.383, the Department agrees that it should be left to the discretion of a mental health practitioner to determine, following a mental health evaluation, whether treatment is appropriate for a known inmate-on-inmate or resident-on-resident abuser.

Comment. Advocacy organizations and a county sheriff's office questioned the Department's decision to exclude jails from the requirement to inquire about past sexual abusiveness. The sheriff's office asserted that, in light of the safety risks posed by an individual who has previously perpetrated abuse, it is especially critical that jails consider that history. By contrast, several juvenile justice agencies and advocacy groups requested an analogous carve-out for short-term juvenile facilities.

Response. The Department has preserved the exemption for jails from the requirement under § 115.81 that inmates whose screenings indicate prior sexual abusiveness be offered a follow-up meeting with a medical or mental health practitioner within 14 days, as well as the requirement under § 115.83 that known inmate-on-inmate abusers be offered a mental health evaluation and treatment, where deemed appropriate. Because of the smaller capacity of many jails and high inmate turnover, it would be overly burdensome to require jails to provide mental health follow-up meetings or evaluations for individuals whose screenings indicate prior sexual abusiveness.

In light of the importance of providing mental health support to youth who have reported sexual abusiveness—a point underscored by numerous commenters who requested that the 14-day timeframe for a follow-up meeting be reduced for juveniles—the final standard does not exempt any juvenile facilities from the medical and mental health care requirements for abusers.

Comment. Two State juvenile justice agencies raised concerns about the standard's interaction with mandatory reporting laws. One recommended that the standard require staff members conducting screenings to provide appropriate notice regarding the agency's mandatory reporting obligations under State law; another suggested that the standards offer guidance on following such laws.

Response. The Department recognizes the importance of providing staff with guidance on how to comply with State-mandated reporting laws. However, given the range of State mandatory reporting laws and agency policies for complying with such laws, the Department is not in a position to provide detailed instructions for compliance. Instead, the Department has revised §§ 115.31, 115.131 and 115.231 to require that staff receive training on how to comply with relevant laws relating to mandatory reporting of sexual abuse.

Comment. A State juvenile justice agency recommended adding language to the standard to specify the distinction between previously reported and never-before-reported sexual victimization.

Response. The Department does not find it necessary to distinguish in the standard between new reports of sexual victimization and previously reported sexual victimization. A resident's history of prior sexual victimization or abusive behavior may contribute to medical or mental health concerns, regardless of whether such victimization was previously reported upon a prior admission to the facility. The resident should be offered a follow-up meeting with a medical or mental health practitioner within 14 days of the new intake screening, but if the practitioner determines through such follow-up meeting that treatment is not warranted, the facility need not provide such services. The requirements relating to mandatory reporting laws, confidentiality, and informed consent under the paragraphs newly designated as § 115.381(c) and (d) adequately address any legal issues that could arise pertaining to a new report of sexual victimization.

Comment. Two commenters raised concerns about confidentiality. A State juvenile justice agency recommended modifying the confidentiality provisions (designated in the final rule as §§ 115.81(c) and 115.381(c)) to specify that any information relating to sexual victimization or abusiveness may be provided to staff only on a need-to-know basis to inform treatment plans and security and management decisions. A county sheriff argued that an inmate should not be able to maintain confidentiality regarding his or her prior abusiveness in institutional settings, as it could imperil other inmates.

In addition, a State sheriffs' association raised concerns that inquiring about an inmate's sexual history in a public setting, where intake screenings are currently conducted, would violate the inmate's privacy. The association expressed apprehension that facilities would be required to build private screening rooms, which the association suggested would raise issues of cost and space.

Response. The final standard requires that dissemination of information related to sexual victimization or abusiveness be ''strictly limited'' to medical and mental health practitioners and other staff, as necessary, to inform treatment plans and security and management decisions, or as otherwise required by Federal, State, or local law. The Department interprets this to mean that such information shall be shared only to the extent necessary to ensure inmate safety and proper treatment and to comply with the law. The facility retains discretion in how to provide the necessary degree of confidentiality while still accounting for safety, treatment, and operational issues.

Sections 115.41, 115.141, 115.241, and 115.341 do not require that intake screenings occur in private rooms. However, the Department expects that screening will be conducted in a manner that is conducive to eliciting complete and accurate information.

Comment. A State juvenile probation commission requested that the Department define the terms ''abusiveness'' and ''victimization.''

Response. In light of the rule's detailed definition of sexual abuse, the Department does not find it necessary to define sexual abusiveness or sexual victimization.

Comment. A State juvenile justice agency recommended replacing ''follow-up reception'' with ''follow-up appointment,'' and suggested adding a requirement to paragraph (b) that staff ensure that the inmate or resident is offered a follow-up appointment with a medical or mental health provider ''and is referred to a medical practitioner when indicated.''

Response. The Department agrees that the phrase ''follow-up reception'' is unclear and has changed ''reception'' to ''meeting.'' As discussed above, the Department intends for a ''follow-up meeting,'' in contrast to an evaluation, to entail an interaction between a health care provider and inmate or resident in which the provider focuses on mitigating immediate mental health concerns and assessing security risks, as well as informing decisions with regard to further treatment. In light of the requirements for ongoing medical and mental health care under §§ 115.83 and 115.383, the Department does not find it necessary for the standard to require that inmates or residents be referred to a medical practitioner when indicated.

Access to Emergency Medical and Mental Health Services (§§ 115.82, 115.182, 115.282, 115.382)

Summary of Proposed Rule

The standard contained in the proposed rule required that victims of sexual abuse receive free access to emergency medical treatment and crisis intervention services.

Changes in Final Rule

The Department has added a requirement for prisons, jails, community confinement facilities, and juvenile facilities that victims of sexual abuse while incarcerated be offered timely information about and timely access to emergency contraception, in accordance with professionally accepted standards of care.

In addition, the Department has made four clarifying changes. First, the Department has specified that sexually transmitted infections prophylaxis must be offered where ''medically'' appropriate, to clarify that the assessment of whether to offer prophylaxis should be based solely on a medical judgment. Second, the final standard specifies that such prophylaxis must be offered in accordance with professionally accepted standards of care. Third, the final standard clarifies that a victim cannot be charged for any of the services described in this standard, or required to name the abuser as a condition of receipt of care. Finally, the Department has qualified the word ''access'' with ''timely'' to underscore the time-sensitive nature of emergency contraception and sexually transmitted infections prophylaxis and to ensure that drugs are provided within their window of efficacy.

Comments and Responses

Comment. A number of advocacy organizations commented that major medical organizations and sexual assault treatment guides recommend the provision of emergency contraception as a standard part of treatment for rape victims. These commenters requested (1) that the standards provide specific guidance regarding the provision of emergency contraception at no cost to inmate victims who may be at risk of pregnancy, and (2) in light of the contraceptive's time-sensitive nature, that the standards explicitly require facilities to stock an adequate supply of emergency contraception so that it will be immediately available. In addition, an advocacy organization requested that the Department clarify that pregnancy-related services and sexually transmitted infections prophylaxis be offered without cost, and recommended that the phrase ''where appropriate'' be replaced with ''where medically appropriate.'' Finally, one commenter remarked that the requirement that female victims be given access to pregnancy-related services is duplicative of §§ 115.83, 115.283, and 115.383.

Response. The Department agrees that it is essential that inmates at risk of pregnancy following an incident of sexual abuse be given timely access to emergency contraception. Accordingly, the Department has modified the standard to specify that such inmates shall be offered timely information about and timely access to emergency contraception, in accordance with professionally accepted standards of care, where medically appropriate. The Department declines to specify that facilities must stock a particular drug, but has clarified that access to emergency contraception must be ''timely''; certainly, timeliness is achieved only if the contraceptive is provided within its window of efficacy. To ensure that emergency contraception and sexually transmitted infections prophylaxis are available at no cost to the victim, the Department has moved to the end of the standard the clause requiring that treatment services be provided to the victim without financial cost; the Department intends for the phrase ''treatment services'' to encompass the provision of medical drugs. The Department has also clarified that the determination of whether emergency contraception or sexually transmitted infections prophylaxis should be offered to a victim must be based solely on whether the drug is ''medically'' appropriate. Finally, to avoid duplication of §§ 115.83, 115.283, and 115.383, the Department has eliminated the reference to pregnancy-related services in this standard.

Comment. Some advocacy groups recommended expanding the lockup standard to require facilities to offer detainee victims of sexual abuse timely information about and access to all pregnancy-related services and sexually transmitted infections prophylaxis, where appropriate.

Response. In light of the very short-term nature of lockup detention, the Department does not believe that it is necessary to require lockups to provide emergency contraception or sexually transmitted infections prophylaxis. Consistent with its obligation to provide

appropriate emergency care, a lockup would transfer such a detainee to an appropriate emergency medical provider, which would be expected to provide such care as appropriate.

Comment. One State correctional agency remarked that ''unimpeded access'' is nearly impossible to ensure, even in the community.

Response. The Department has preserved the requirement that access to emergency medical and mental health care services for sexual abuse victims be ''unimpeded'' to make clear that agencies may not impose administrative hurdles that could delay access to these critical services.

Comment. A State correctional agency recommended that the Department define the term ''sexually transmitted infections prophylaxis.''

Response. The Department intends for ''sexually transmitted infections prophylaxis'' to encompass appropriate post-incident treatment to reduce the risk of sexually transmitted diseases resulting from an incident of sexual abuse, and does not find it necessary to include a definition for that term in the final rule.

Ongoing Medical and Mental Health Care for Sexual Abuse Victims and Abusers (§§ 115.83, 115.283, 115.383)

Summary of Proposed Rule

The standard contained in the proposed rule required that victims of sexual abuse receive access to ongoing medical and mental health care, and that abusers receive access to care as well. The standard required facilities to offer ongoing medical and mental health care consistent with the community level of care for as long as such care is needed.

The standard also required that known inmate abusers receive a mental health evaluation within 60 days of the facility learning that the abuse had occurred.

In addition, with respect to victims, the standard required that agencies provide, where relevant, pregnancy tests and timely information about and access to all pregnancy-related medical services that are lawful in the community. The Department also proposed requiring the provision of timely information about and access to sexually transmitted infections prophylaxis where appropriate.

Changes in Final Rule

The Department has expanded the duty to provide non-emergency medical and mental health care to victims of sexual abuse by requiring care for individuals who were victimized in any prison, jail, lockup, or juvenile facility rather than only for those who were victimized ''during their present term of incarceration.'' However, the Department has clarified that such care need not be ''ongoing'' but need be provided only ''as appropriate.''

The final standard adds a requirement that victims of sexual abuse while incarcerated be offered tests for sexually transmitted infections as medically appropriate, and clarifies that information about pregnancy-related medical services must be ''comprehensive'' and access to pregnancy-related medical services must be ''timely.''

For clarity, the Department has replaced the reference to access to ''all pregnancy-related medical services that are lawful in the community'' with ''all lawful pregnancy-related medical services.''

The Department has also added language, identical to a provision in § 115.82, that requires that all treatment services under this standard be made available without financial cost to the victim and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

Finally, the Department has made several clarifying changes to the requirement that facilities conduct mental health evaluations of inmate abusers and offer treatment when deemed appropriate: The final standard specifies that facilities need only ''attempt'' to conduct mental health evaluations; indicates that this clause applies only to inmate-on-inmate abusers; and no longer requires that only ''qualified'' mental health practitioners be permitted to determine whether it is appropriate to offer treatment. The final standard also clarifies the wording of references to sexual abuse victims.

Comments and Responses

Comment. A State juvenile justice agency noted that the phrase ''resident victims'' could refer to individuals who were victimized prior to placement in the facility. For clarity, the commenter also requested that the standard uniformly refer to victims of sexual abuse as ''residents who, during their term of incarceration, have been victimized.''

Response. The Department intends for the standard to encompass individuals who were victimized while in another facility. Accordingly, the final standard clarifies that medical and mental health evaluation and, as appropriate, treatment must be offered to all inmates or residents who have been victimized by sexual abuse in any facility.

Comment. A county sheriff predicted that a large percentage of inmates will claim to have been victimized, which would overload the system and impose substantial additional costs.

Response. The final standard requires an evaluation and treatment ''as appropriate.'' To the extent that an inmate falsely alleges prior victimization, such treatment would not be appropriate. Furthermore, all facilities are already obligated to provide adequate care to meet inmates' serious mental health needs. *See Estelle* v. *Gamble,* 429 U.S. 97, 104 (1976). By providing evaluation and treatment to sexual abuse victims ''as appropriate,'' facilities are simply providing constitutional conditions of care.

Comment. Numerous commenters expressed support for the requirement that women who become pregnant as a result of rape receive access to pregnancy tests and timely information about and access to pregnancy-related services. Several commenters requested that the standard be clarified to reflect the fact that female inmates retain the right to an abortion. These commenters recommended modifying the standard to ensure that victims who become pregnant as a result of sexual abuse receive adequate information to make decisions about their pregnancy as well as any assistance necessary to carry out those decisions.

In particular, a group of women's rights organizations requested that a woman who becomes pregnant as a result of sexual abuse while incarcerated be provided with comprehensive and unbiased counseling on options, including information on how pregnancy will affect the conditions of her confinement and information on the full spectrum of her parental rights and responsibilities.

These commenters also requested that the standards specify that an incarcerated rape victim be able to terminate her pregnancy at no financial cost, and that counseling include an explanation that she will not have to pay for her medical care, whether she chooses to terminate the pregnancy or carry to term. In addition, these commenters requested that facilities be required to protect from coercion and retaliation women who accuse staff members of rape and then choose to carry to term, and that the standards specify that facilities must provide transportation for abortion care, distance and cost notwithstanding.

Finally, the commenters criticized as excessively vague the proposed standard's requirement that pregnant

rape victims receive timely information about and access to all pregnancy-related medical services ''that are lawful in the community.'' Commenters expressed concern that facility staff may take an unduly narrow view in evaluating which services are ''lawful in the community,'' possibly concluding that because there is no abortion provider in the county, abortion services are not ''lawful in the community.'' These commenters requested that the standard be revised to clarify that victims have access to all pregnancy-related medical services, including the right to terminate a pregnancy or carry to term.

Response. The Department agrees that women who are sexually abused while incarcerated and become pregnant as a result must receive comprehensive information about and meaningful access to all lawful pregnancy-related medical services at no financial cost. The final standard includes several clarifying revisions. First, the Department has specified that such victims must receive timely and comprehensive information about all lawful pregnancy-related medical services, and that access to pregnancy-related medical services must be timely. Second, the Department has removed the phrase ''that are lawful in the community'' and instead required facilities to provide information about and access to ''all lawful'' pregnancy-related medical services. Third, the Department has added a requirement that treatment services provided under this standard be made available without financial cost and regardless of whether the victim names the abuser. This provision mirrors the requirement under §§ 115.82, 115.282, and 115.382 that emergency services must be made available at no financial cost to the victim.

The Department believes that the commenters' requests regarding the provision of specific information are encompassed by the requirement that facilities provide ''comprehensive'' information about all lawful pregnancy-related medical services, and that additional guidance on transportation is unnecessary given the requirement that victims be provided ''timely access'' to all lawful pregnancy-related medical services—which necessarily includes transportation. Finally, while the Department appreciates commenters' concern about the risk of coercion or retaliation by staff members accused of sexual abuse in cases where a victim becomes pregnant, the Department believes that the protections against retaliation provided in §§ 115.67, 115.167, 115.267, and 115.367 are adequate to address this risk.

Comment. A national coalition of LGBTI advocacy organizations recommended that the standards expressly require facilities to offer testing for HIV and other sexually transmitted infections, accompanied by counseling before and after the test and contingent upon written consent from the inmate. However, they urged that victims should not be required to undergo testing and not be punished for declining testing. A State juvenile justice agency also recommended testing for sexually transmitted infections.

Response. The Department agrees that the standards should expressly require that facilities offer testing for sexually transmitted infections, and has added a new paragraph (f) that requires facilities to offer such tests, as medically appropriate, to victims of sexual abuse while incarcerated. The language stating that victims ''shall be offered'' tests makes clear that victims are not required to undergo such testing. The Department trusts that medical practitioners administering such tests will adhere to professionally accepted standards for pre- and post-test counseling and written consent.

Comment. Several State correctional agencies, sheriff's offices, and sheriff's associations asserted that conducting a mental health evaluation of abusers and offering treatment where deemed appropriate would be prohibitively costly. A State correctional agency stated that the mental health care requirements for abusers could be burdensome and that victims should remain the top priority. However, an advocacy organization agreed with the Department's statement in the NPRM that the benefit of reducing future abuse by known abusers justifies the additional costs.

Response. The Department remains of the view that the benefit of reducing future abuse by known inmate-on-inmate or resident-on-resident abusers—by avoiding incidents and improving the perception of safety within the facility—justifies the cost of mental health evaluations and, where appropriate, treatment. However, the Department underscores that, as stated in the NPRM, the standard is not intended to require a specialized comprehensive sex offender treatment program, which could impose a significant financial burden. The Department believes that requiring agencies to offer reasonable treatment, when deemed appropriate by a mental health practitioner, is justifiable in light of the anticipated costs and benefits.

The Department agrees that mental health care for victims should be the priority and accordingly has provided more detail on the minimum standards of care for victims than for abusers. The standard specifies that evaluation and treatment of sexual abuse victims shall include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody. The standard further requires that facilities provide victims of sexual abuse with medical and mental health services consistent with the community level of care.

Comment. Numerous commenters expressed concern over the requirement that facilities provide a mental health evaluation of all known inmate-on-inmate abusers within 60 days. Several correctional agency commenters suggested that 60 days is too long, and recommended reducing the timeframe to 30 days, 14 days, 7 days, or 72 hours. An advocacy organization stated that the 60-day requirement is incompatible with the shorter average length of stay in juvenile facilities and recommended a seven-day timeframe for juveniles, which the commenter asserted is in line with the relevant standards established by the National Commission on Correctional Healthcare.

Several commenters took the opposite position, and recommended extending the timeframe or removing it all together. A State correctional agency observed that this requirement might pose difficulties for smaller agencies, which may lack in-house staff capable of conducting a mental health evaluation; as a compromise, the commenter recommended requiring agencies to arrange for an evaluation within 60 days and to conduct the evaluation as soon as practicable thereafter.

One State correctional agency suggested that conducting an evaluation within 60 days is unrealistic due to a State law requirement that, where a determination that an inmate is a sex offender is made pursuant to procedures established by the State department of corrections, such determination must be made following an adversarial hearing conducted by a licensed attorney serving as an administrative hearing officer.

Response. The Department has preserved the 60-day requirement as the best balance of the various concerns noted by commenters. The Department acknowledges that certain inmates with a history of abusiveness will be transferred or released from the facility before undergoing a mental health

evaluation or receiving treatment. However, smaller facilities may find it challenging to find a practitioner equipped to provide treatment to abusers, and very short-term treatment is likely to be ineffective. The Department has therefore constructed the standard so as to afford facilities some flexibility.

The 60-day clock starts only upon the agency's ''learning of such abuse history''; thus, where an agency is required to hold a hearing in order to determine whether an inmate is an abuser, the treatment need not be offered until the determination is made.

Comment. Two State correctional agencies recommended that facilities be required only to perform mental health assessments, rather than evaluations, on known inmate-on-inmate abusers.

Response. An assessment is unlikely to provide a mental health practitioner with sufficient information on which to base a determination about future treatment. Thus, the final standard retains the evaluation requirement.

Comment. Several agency commenters raised concerns about the requirement that known abusers be offered treatment where deemed appropriate by a mental health practitioner, asserting that many facilities lack the time or expertise to provide effective treatment to abusers. One agency suggested that ''supportive therapy'' would be a better requirement than ''treatment.'' Another State correctional agency worried about the legal implications of compelling an alleged abuser with a criminal case pending to participate in this program.

Response. The final standard requires only that the facility offer an evaluation and, if the inmate consents to that evaluation, offer treatment ''when deemed appropriate by mental health practitioners.'' The standard does not mandate the type or extent of treatment, but leaves it to the discretion of the mental health practitioner to recommend therapy, a structured treatment program, medication, or whatever course of action is best suited for the needs of the specific inmate and the capabilities of the facility. The standard does not require that abusers be compelled to participate in treatment.

The Department notes that the standard only requires that a known inmate-on-inmate or resident-on-resident abuser be offered treatment where deemed appropriate by a mental health practitioner. The standard does not require the agency to compel participation.

Comment. A county correctional agency asked how long a facility would be required to provide treatment.

Response. The standard's reference to treatment that is ''appropriate'' leaves it to the facility's mental health practitioners to determine the length of treatment.

Comment. A State sheriff's association and a county correctional agency asked whether the standard requires the agency to provide treatment for abuse that did not occur in the facility. A State juvenile justice agency observed that the standard does not distinguish between abuse that occurred prior to incarceration and abuse that occurred during incarceration.

Response. The final standard clarifies that facilities must offer medical and mental health evaluation and, as appropriate, treatment to all inmates or residents who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility.

Comment. A State correctional agency suggested that the standard refer to ''inmate-on-inmate'' and ''resident-on-resident abusers'' rather than ''inmate abusers'' and ''resident abusers''. One State correctional agency wondered why the standard seemingly applied to staff members who have abused inmates or residents. An individual commenter proposed classifying individuals as ''known resident abusers'' by three measures: Criminal history indicating that the resident has been found guilty of a felony sex offense or a misdemeanor sex offense involving sexual abuse; an admission at any time to having committed sexual abuse regardless of prosecution; or a finding of abuse following a sexual abuse allegation and subsequent investigation. A State department of corrections asked whether ''known inmate abuser'' includes someone who committed inmate-on-inmate abuse many years ago. An organization that advocates for disability rights proposed adding a statement that the relevant abuse be defined as having occurred within the past two years in the facility in which the individual is currently confined, and two State juvenile justice agencies requested revising the standard to define ''known resident abusers'' as residents who have committed sexual abuse or sexual harassment during their present term of incarceration.

Response. The final standard clarifies that evaluation and treatment for abusers is intended for ''known inmate-on-inmate abusers'' or ''known resident-on-resident abusers.'' It does not encompass inmates or residents who committed a sex offense in the community, or staff who have abused inmates or residents. However, the Department declines to impose a time limit on classification as an inmate-on-inmate or resident-on-resident abuser, or a requirement that the abuse must have occurred in the facility in which the individual is currently confined. The safety risks posed by an individual who has previously committed sexual abuse while in a confinement facility, and the need for mental health care, may persist regardless of where or when the incident occurred.

Finally, in light of the unfortunate reality that sexual harassment is pervasive among inmates and residents, the Department believes that a requirement to provide mental health evaluations and treatment for all inmates and residents who have committed sexual harassment would impose an excessive burden upon facilities.

Comment. A State correctional agency requested that the standard allow for mental health evaluations to be conducted by staff other than medical and mental health practitioners.

Response. While the standard does not specify that only medical and mental health practitioners may conduct the mental health evaluation, generally accepted professional standards dictate that only a qualified and trained medical or mental health practitioner can adequately evaluate an individual's mental health needs and determine when it is appropriate to offer treatment.

Comment. A company that owns and manages prisons and detention centers asserted that the requirement that mental health practitioners have special qualifications is too great a burden to meet. A State correctional agency recommended expanding the definition of ''qualified mental health practitioner'' to include a provider ''who has also successfully completed specialized training for treating sexual abusers.''

Response. The Department agrees that it may be challenging for smaller facilities to employ mental health practitioners with documented expertise in sexual victimization or sexual abuse, and has removed the phrase ''qualified mental health practitioner.'' The final standard requires facilities to offer treatment to an inmate-on-inmate or resident-on-resident abuser when deemed appropriate by ''mental health practitioners.''

Comment. The AJA and a State jail wardens' association commented that it would be difficult for small, rural jails to provide treatment to abusers. They stated that jails are unlikely to have on-site mental health services, and that the nearest mental health facility may object to treating inmates on their premises

due to the lack of a secure area. On the other hand, a county sheriff's office questioned why jails were excluded from the provision relating to the evaluation and treatment of abusers.

Response. The Department agrees it may be difficult for some jails to evaluate and treat abusers. Accordingly, the final standard preserves the exemption for jails from the provision requiring facilities to attempt to conduct a mental health evaluation for known abusers and to offer treatment when deemed appropriate by mental health practitioners.

Comment. A State juvenile justice agency recommended that treatment of resident-on-resident abusers in juvenile facilities not be identified as sex offender treatment unless the resident has been adjudicated for the offense.

Response. The Department trusts that facilities will refer to the treatment of known resident-on-resident abusers in a manner that is accurate and considerate of the resident's privacy needs.

Comment. A juvenile detention center recommended that the Department promulgate separate standards for short- and long-term juvenile facilities.

Response. The Department concludes that it is essential that all juvenile facilities comply with the standard for ongoing medical and mental health care, including the provisions relating to treatment for known resident-on-resident abusers. The final standard requires agencies to attempt to conduct a mental health evaluation of known abusers within 60 days, recognizing that facilities that house inmates for shorter periods of time may not be able to provide such an evaluation. While ideally all known abusers would be offered such evaluations, the Department notes also that those who are confined for shorter periods of time present a smaller risk of committing further abuse.

Sexual Abuse Incident Reviews (§§ 115.86, 115.186, 115.286, 115.386)

Summary of Proposed Rule

The standard contained in the proposed rule set forth requirements for sexual abuse incident reviews, including when reviews should take place and who should participate. Unlike the sexual abuse investigation, which is intended to determine whether the abuse occurred, the sexual abuse incident review is intended to evaluate whether the facility's policies and procedures need to be changed in light of the alleged incident. The Department proposed that a review occur at the conclusion of every investigation of an alleged incident, unless the investigation concludes that the allegation was unfounded. The Department further required the review to consider: (1) Whether changes in policy or practice are needed to improve the prevention, detection, or response to sexual abuse incidents similar to the alleged incident; (2) whether race, ethnicity, sexual orientation, gang affiliation, or group dynamics in the facility played a role; (3) whether physical barriers in the facility contributed to the incident; (4) whether staffing levels need to be changed in light of the alleged incident; and (5) whether more video monitoring is needed.

Changes in Final Rule

In order to ensure that an incident review results in timely action, the final standard includes a new paragraph (b) specifying that the review should ordinarily occur within 30 days of the conclusion of the investigation. In the paragraph formerly designated as (b), now designated as (c), the Department has replaced ''upper'' with ''upper-level.'' In what was paragraph (c)(2), now (d)(2), the Department has revised the list of factors to be considered during the review by replacing ''sexual orientation'' with ''gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status.'' In what was paragraph (c)(6), now (d)(6), ''PREA coordinator, if any'' has been changed to ''PREA compliance manager,'' and the Department has clarified that the review team's report must include any determinations made pursuant to paragraphs (d)(1)–(d)(5). In addition, the final standard requires the facility either to implement the review team's recommendations for improvement or document its reasons for not doing so.

Comments and Responses

Comment. Several commenters recommended that the standard specify a timeline for the review. Two advocacy organizations suggested, in particular, that the Department implement measurable benchmarks, including a timeline, in order to ensure that the results of an incident review translate into action and to assist the auditor in measuring compliance with the review provision.

Response. The final standard states that the sexual abuse incident review shall ordinarily occur within 30 days of the conclusion of the sexual abuse investigation.

Comment. An advocacy group recommended requiring the facility head and PREA coordinator to determine, after receiving the report, which recommendations to carry out and to document benchmarks and a timeline for doing so as an addendum to the report.

Response. The Department believes that the timeline added as the new paragraph (b) will suffice to ensure timely compliance with the standard. The required submission of the report of the review team's findings and any recommendations to both the facility head and the PREA compliance manager also ensures effective oversight. In addition, facilities must either implement the recommendations for improvement or document the reasons for not doing so, which will encourage thoughtful reform. While the Department encourages facilities to develop a plan for implementing any revisions to their policies, the Department concludes that it is not necessary to require documentation of benchmarks and a timeline.

Comment. Some commenters recommended that the Department add sexual harassment to this standard, because sexual harassment is often a precursor to sexual abuse.

Response. The Department has incorporated coverage of sexual harassment into the final standards where feasible. The Department concludes that adding sexual harassment to the incidents requiring review would needlessly complicate the process by introducing a separate process for sexual harassment incidents. Under § 115.11, facilities are already required to maintain a written zero-tolerance policy toward sexual harassment. The Department believes that the cost of requiring review of sexual harassment incidents, which may be far more numerous than incidents of sexual abuse, could impose an unnecessary burden upon facilities and make compliance with the standard more difficult.

Comment. Commenters recommended defining ''substantiated,'' ''unsubstantiated,'' and ''unfounded'' to ensure that the meaning of the findings is understood.

Response. Section 115.5 contains definitions of ''substantiated allegation,'' ''unfounded allegation,'' and ''unsubstantiated allegation.''

Comment. Some commenters recommended that the Department require review teams to consider, in addition to the areas listed in the standard, whether training curricula should be modified or expanded. A juvenile advocacy organization also recommended that incident reviews include input from victims, witnesses, family members, and guardians on how

to improve the investigation and response processes.

Response. The Department concludes that the limited benefits from these recommended revisions would be outweighed by the additional burdens that would be imposed by adding such requirements for every post-incident review. Of course, the Department encourages facilities to reexamine training curricula periodically based upon accumulated knowledge gleaned from the facilities' experience in combating sexual abuse. And, as the commenter suggests, facilities may wish to solicit input from victims and witnesses as a guide to improving their practices.

Comment. Several commenters recommended that the Department clarify who constitutes an ''upper-level management official'' for purposes of participating in a sexual abuse incident review.

Response. This term cannot be defined with precision; it properly affords facilities discretion to make reasonable judgments as to which officials should participate.

Comment. A victim services organization recommended requiring that the upper-level management responsible for review be independent from the investigation and have authority to make agency-level changes in response to information received from the reviews.

Response. The Department believes that it is unnecessary for the standard to regulate at this level of detail. Rather, it is preferable to leave sufficient flexibility to the facility to organize its staff and resources to conduct an effective review. In particular, it is impractical to require the involvement of an administrator with the authority to make agency-level changes, given that the review is intended to occur at the facility level.

Comment. Commenters suggested that, in order to ensure compliance with the review's findings, the review team should include the facility's PREA coordinator, and the report should be submitted to the agency head for review and implementation of recommended changes.

Response. The Department declines to revise the relevant provision, which requires that the review team's findings and recommendations for improvement be submitted to the facility head and to the PREA coordinator (renamed as the PREA compliance manager in the final standards). The Department believes that oversight by the facility head and PREA compliance manager will ensure implementation without needlessly micromanaging the facility's review process.

Comment. Some commenters questioned whether the consideration of race, ethnicity, sexual orientation, gang affiliation, and other group dynamics as possible motivations for an alleged incident may require special training and, if so, whether the cost of that training would hinder compliance.

Response. The Department believes that additional training is unnecessary in light of the range of training topics already required in § 115.31.

Comment. A juvenile justice agency questioned whether the review should make such a determination if a criminal investigation is proceeding at the same time.

Response. The final standard states that the incident review should occur at the conclusion of every sexual abuse investigation, unless the allegation has been determined to be unfounded. If the facility's investigation is put on hold during a criminal investigation, the facility can wait to conduct the incident review until the investigation has concluded. Furthermore, the incident review required by this standard is intended to allow the facility to identify systemic problems in policies, practices, dynamics, physical barriers, staffing levels, and monitoring that may have contributed to an incident or allegation of sexual abuse, so that the facility can improve conditions to avoid future incidents or allegations. Such a review should not interfere with a criminal investigation.

Comment. Several advocates recommended that gender identity be included in the list of possible motivating factors to be considered.

Response. The Department has added gender identity to the list of possible motivating factors to be considered.

Data Collection (§§ 115.87, 115.187, 115.287, 115.387)

Summary of Proposed Rule

The standard contained in the proposed rule specified the incident-based data that each agency is required to collect in order to detect possible patterns and to help prevent future incidents. The Department proposed that the agency be required to collect, at a minimum, sufficient data to answer fully all questions in the most recent revision of the Survey of Sexual Violence (SSV) conducted by BJS. The Department further proposed that the agency collect data from multiple sources (*e.g.,* reports, investigation files, and sexual abuse incident reviews), that it aggregate the data at least annually, that it obtain the corresponding data from all private facilities with which it contracts for confinement, and that it make this data available to the Department upon request.

Changes in Final Rule

The final standard includes three small changes. Paragraph (c) now refers to the Department as whole rather than BJS. In paragraph (d), ''collect data from multiple sources'' has been changed to ''maintain, review, and collect data as needed from all available incident-based documents.'' In paragraph (f), ''calendar'' has been added before ''year.''

Comments and Responses

Comment. Several commenters asserted that the data collection and review requirements in this standard, and in §§ 115.88 and 115.89, would be overly burdensome. Some State correctional agencies and a county sheriffs' association suggested that the large collection of data would require significant hiring of new staff or staff reallocation. A State juvenile justice agency stated that meeting the standard would require it to redesign its computer systems and purchase data collection software.

A county juvenile justice agency suggested that this standard would be especially burdensome for smaller juvenile facilities such as group homes and private placement facilities. The commenter remarked that if those facilities are deemed non-compliant with the PREA standards due to an inability to provide data under § 115.387, the agency would likely need to cancel contracts with those facilities in order to protect itself and the county from liability. The commenter suggested that canceling contracts with such facilities would exacerbate difficulties in placing minors ordered removed from parents' custody. Furthermore, the commenter stated, delays could result in longer waits in juvenile detention facilities and in the occupation of beds needed for pre-adjudication minors, and the cost of having to provide more beds long-term would be substantial. Two State correctional agencies objected that the standard would require the agencies to increase or realign staff, without funding to match.

Response. The Department acknowledges that facilities may need to incur costs to comply with the standards for data review and collection. Yet these costs should be manageable, and exceeded by the benefits that will accrue from managing and publishing the data in accordance with these standards. Many, if not all, of these agencies have existing reporting

requirements and may, therefore, have existing support staff that can be trained to fulfill the functions outlined in these standards. The Department is not persuaded that this standard will impose a disproportionate cost on smaller agencies and facilities—which, in keeping with their size, should have correspondingly fewer allegations to document and report.

Comment. Several commenters recommended adding sexual harassment to this standard.

Response. The Department declines to make this change, largely for the same reasons discussed above with respect to § 115.86. While sexual harassment may be a precursor to sexual abuse, it is both more frequent and less damaging than sexual abuse. Requiring the collection of incident-based data on sexual harassment would therefore impose a greater burden and result in fewer benefits than requiring the same data for incidents of sexual abuse.

Comment. Some commenters expressed concern that because the data collection requirement applies to all allegations regardless of legitimacy, it could overburden facilities. One juvenile agency recommended restricting the requirement to substantiated allegations.

Response. For allegations that are not substantiated, the data collection burden is minimal: to collect data necessary to answer all questions from the most recent version of the SSV.[37] The SSV requests detailed information only for substantiated incidents; for incidents that are determined to be unsubstantiated or unfounded, or subject to an ongoing investigation, the current SSV requires only that the facility list the number of each type of allegation, divided into sexual abuse and sexual harassment.

Comment. A few juvenile agencies questioned the requirement in paragraph (d) that data be collected from multiple sources, because multiple sources may not always be needed to compile the requisite aggregate data.

Response. The Department agrees and has revised paragraph (d) accordingly.

Comment. An administrative office of the courts suggested that ''Survey of Sexual Violence'' should read ''Survey on Sexual Violence.''

Response. The Department has not made this change; the BJS data collection is titled ''Survey of Sexual Violence.''

Comment. Some commenters suggested broadening the scope of who is deemed in compliance with the regulation. A State juvenile justice agency recommended, in particular, that jurisdictions that currently use standardized instruments such as the Performance-based Standards (PbS) and Community-based Standards (CbS) should be deemed automatically in compliance for purposes of data collection. The commenter noted that standardized instruments and uniform sexual abuse definitions are already used by PbS and CbS programs operating in 28 States and the District of Columbia and suggested that States participating in PbS or CbS programs should be considered to be in compliance with this standard by virtue of their participation.

Response. The Department sees no reason for States that have PbS and CbS programs to be deemed automatically in compliance. However, such States, like all entities that currently compile data, may not need to make significant adjustments to their data collection policies if their collections currently include, as required by the standard, data necessary to answer all questions from the most recent version of the SSV.

Comment. A county sheriff's office noted that paragraph (e) requires agencies to collect data from private facilities with which they contract for confinement, whereas the most recent revision to the SSV excludes contracted facilities because BJS contacts these facilities directly.

Response. The Department believes that making public agencies responsible for collecting data from facilities that they supervise directly and from private facilities with whom they contract for confinement is the best way to ensure compliance. Centralizing data collection in this way will maximize the likelihood of effective oversight by the agency and the Department.

Comment. The same commenter requested clarification as to whether paragraph (f) requires a separate report or the information will be provided by BJS to the relevant Department components. The commenter also inquired as to whether, if the Department intends to contact agencies directly, it will request information different from the information required by the SSV.

Response. Pursuant to the wording of the standard, the Department reserves the right to request all data compiled by the agency. The data will not be obtained from BJS. Under its authorizing legislation, BJS is not allowed to release publicly information that could identify victims or perpetrators. In addition, PREA provides that BJS must ensure the confidentiality of participants in the PREA-related surveys that it conducts. *See* 42 U.S.C. 15603(a)(1).

Comment. A State juvenile justice agency recommended deleting paragraph (f) as duplicative of reporting requirements in other standards. If the paragraph is retained, the commenter recommended that the Department define ''all such data'' and clarify facilities' reporting obligations by specifying how far in advance and under what circumstances a request for data may be made (*e.g.,* annually or only in connection with an audit). The commenter further proposed amending the paragraph to provide a specific timeframe for an agency to prepare and provide its responses. Additionally, the commenter recommended that the Department require that (as in § 115.89(c)) ''when data is aggregated, confidential information shall be redacted and personal identifiers shall be removed.''

Response. The Department does not believe that paragraph (f) is duplicative. Rather, it serves an additional function in requiring that the agency make its data available to the Department upon request. By ''all such data,'' the Department references all data collected pursuant to this standard. The Department declines to create a separate framework for the timing of requests from the Department, which could unnecessarily hamper the Department's flexibility in obtaining data as needed. Furthermore, pursuant to § 115.88, each agency will be required to review the data, prepare an annual report of its findings, and make that report available to the public through the agency's Web site. Finally, the Department declines to add a redaction requirement—the interest in confidentiality regarding a release of data to the public does not apply to the release of information to the Department.

Comment. The same agency recommended that the Department add ''calendar'' after ''previous'' in paragraph (f) to clarify the meaning of ''previous year.'' Because the SSV requires aggregated data for the previous calendar year, the commenter suggested that the Department use the same period for data collection.

Response. The Department agrees and has revised paragraph (f) accordingly.

Comment. A State juvenile justice agency asked that data collected by the State agency from private facilities be limited to those that are in the same jurisdiction, because allegations of abuse reported from an out-of-State provider will be investigated by that jurisdiction's law enforcement. The commenter further recommended that

[37] The latest version of the SSV can be found at *http://bjs.ojp.usdoj.gov/index.cfm?ty=dcdetail&iid=406.*

data requested by the Department be limited to information provided in the SSV and that the Department provide sufficient advance time to submit this information.

Response. The Department believes that proper oversight of the collection and review of data must come through the agencies, in conjunction with the Department. Because agencies contract with private entities for confinement, they are responsible for reviewing the data from these entities, even where a private facility may belong to a different jurisdiction. The Department further observes that limiting the information that the Department can seek to what is required by the SSV, and limiting the timeframe in which this information can be sought, would diminish the Department's effectiveness in assessing data collected by agencies under this standard.

Comment. Several advocates recommended that the Department adopt NPREC supplemental immigration standard ID–11, which would require that, for each incident of alleged sexual abuse, data be collected regarding whether the alleged perpetrator or victim is an immigration detainee.

Response. The most recent version of the SSV does not contain ''immigration detainee'' as a data point, and the Department declines to impose this additional burden on correctional agencies.

Data Review for Corrective Action (§§ 115.88, 115.188, 115.288, 115.388)

Summary of Proposed Rule

The standard contained in the proposed rule described how the collected data should be analyzed and reported. The Department proposed that agencies be required to use the data to identify problem areas, to take ongoing corrective action, and to prepare an annual report for each facility and for the agency as a whole. In order to promote agency accountability, the proposed standard further mandated that the report compare the current year's data with data from prior years and provide an assessment of the agency's progress in addressing sexual abuse. The proposed standard required that the agency make its report publicly available through its Web site or other means. The proposed standard allowed agencies to redact specific material when publication would present a clear and specific threat to the safety and security of a facility, as long as the nature of the redacted material is indicated.

Changes in Final Rule

The Department has reviewed and considered commenters' suggested changes to this standard but has made no substantive changes.

Comments and Responses

Comment. A State sheriffs' association contended that making agencies include an annual comparison would be labor-intensive; the association recommended that, instead, the Department set a broader timeframe for evaluating an agency's progress in addressing sexual abuse. The commenter noted that annual reports may be appropriate for agencies with higher incidence of sexual abuse, but would be impracticable for smaller facilities.

Response. The Department has weighed the costs and benefits of various timelines for reporting and believes that an annual report will best fit the various purposes of the reporting requirements, including effective oversight, transparency in making information regularly available to the public, and uniformity across agencies and facilities. Because data collection is keyed to the calendar year, it is appropriate for the reporting requirement to be annual as well. To vary the timelines of the reporting requirement on the basis of facility size would introduce needless complexity and make it more difficult for agencies that supervise facilities of varying sizes to perform the essential task of reviewing data to implement needed improvements in policies and practices. Additionally, facilities of all sizes already have annual review requirements in a wide range of other areas. Requiring an annual report will ensure consistency with other reporting requirements and will help assess progress in meeting the goals of PREA.

Comment. A State juvenile justice agency suggested that the Department specify what ''other means'' would be acceptable for making the annual report readily available to the public. A State sheriffs' association also noted that the preparation of the annual report would impose extra costs for support staffing and that additional funds would be needed to cover the cost of changing the Web site and adding material to it.

Response. Posting the annual report online will maximize public visibility and accessibility. Only agencies that lack a Web site may make the report available to the public through other means. Such means might include, for example, submitting the report to the relevant legislative body.

The Department recognizes that the preparation of the report will incur support staff time and effort, but believes that the cost of adding material to the Web site will be minimal and outweighed by the benefits of public accessibility.

Comment. Various commenters recommended that the Department revise the standard to encourage facilities to implement changes in response to sexual abuse incidents in an ongoing manner, rather than in response to data aggregated annually. An advocacy organization stated that if agencies are required to compile aggregate data only once per year, they might miss critical opportunities to implement changes to practices, policies, staffing, training, and monitoring. Accordingly, the commenter recommended that paragraph (a) be revised by adding at the beginning ''[a]nnually and after significant incidents.'' A juvenile advocacy organization suggested deleting ''and aggregated'' and encouraging facilities to make appropriate changes to policies and practices on an ongoing, rather than yearly, basis.

Response. The requirement that data be collected and aggregated annually is a floor, not a ceiling. Requiring an annual report will properly facilitate compliance with the data reporting and review requirements without overly burdening agencies. Mandating a more frequent review could prove costly for some agencies and may be of little additional benefit. The standard appropriately leaves to agency discretion whether to collect aggregate data more frequently and how to respond to incidents and concerns in an ongoing way. Implementing the commenters' proposals would restrict agencies' ability to comply with the standard in a manner that most effectively utilizes their limited resources.

Data Storage, Publication, and Destruction (§§ 115.89, 115.189, 115.289, 115.389)

Summary of Proposed Rule

The standard contained in the proposed rule provided guidance on how to store, publish, and retain data. The Department proposed that data must be securely retained for at least ten years after the date of initial collection unless Federal, State, or local law requires otherwise. In addition, the proposed standard required that agencies make aggregated data publicly available through their Web sites or other means, after removing all personal identifiers.

Changes in Final Rule

The Department has added language to clarify that ''sexual abuse data'' in paragraph (d) refers to data collected pursuant to §§ 115.87, 115.187, 115.287, and 115.387.

Comments and Responses

Comment. A county sheriff's office questioned whether ''sexual abuse data'' refers to the sexual abuse incident review, the data reported to BJS through the SSV, or the public reports published on the agency's Web site. The commenter noted that if ''sexual abuse data'' refers to all records created during the sexual abuse investigation, then the standard would conflict with the record-retention requirement of § 115.71.

Response. The Department has revised the standard to clarify that ''data'' refers to data that the agency collects pursuant to § 115.87. Section 115.71 covers a different set of records and therefore does not conflict with § 115.87. Specifically § 115.71 requires that agencies retain written reports that document administrative and criminal investigations for the duration of the alleged abuser's incarceration or employment by the facility, plus five years. Section 115.89, by contrast, requires that the agency retain for at least ten years after the date of its initial collection (unless otherwise required by law) accurate uniform data for each allegation, using a standardized instrument and set of definitions, including at a minimum the data necessary to answer all questions from the most recent version of the SSV. Put differently, § 115.71 covers written reports and the associated records; § 115.89 covers statistics. While it is true that the agency can consult investigative findings as part of its review and collection of incident-based and aggregate data, the latter data are separate from the investigative records themselves and give rise to the different reporting requirements contained in this standard. The differing retention requirements, therefore, do not conflict.

Comment. Two juvenile justice agencies recommended deleting paragraph (b) on the basis that the requirement in § 115.388 to publish an annual report and to make the report available on the agency's Web site already includes a requirement to publish the aggregated sexual abuse data.

Response. Section 115.388 requires agencies to create an annual report documenting their findings and corrective actions based on the aggregated data, but does not require publication of the actual data. The instant standard, by contrast, governs the retention and publication of the data. Specifying a separate requirement for the publication of the data will ensure that agencies can be held accountable for their findings and corrective actions by allowing the public to inspect the data on which these findings and actions were based.

Auditing and State Compliance (§§ 115.93, 115.193, 115.293, 115.393, 115.401, 115.402, 115.403, 115.404, 115.405, 115.501)

Summary of Proposed Rule

In the proposed rule, the Department declined to resolve how frequently, and on what basis, audits should be conducted. Determining that further discussion was necessary in order to assess these issues, the Department included in the NPRM several questions regarding the nature and scope of audits.

The standard contained in the proposed rule did specify the requirements for an audit to be considered independent. If an agency uses an outside auditor, the proposed standard required that the agency ensure that it not have a financial relationship with the auditor for three years before or after the audit, other than payment for the audit conducted. The proposed standard also specified that the audit may be conducted by an external monitoring body that is part of, or authorized by, State or local government, such as a government agency or nonprofit entity whose purpose is to oversee or monitor correctional facilities. In addition, the proposed standard allowed an agency to utilize an internal inspector general or ombudsperson who reports directly to the agency head or to the agency's governing board.

The proposed standard further stated that the Department will prescribe methods governing the conduct of such audits, including provisions for reasonable inspections of facilities, review of documents, and interviews of staff and inmates, as well as the minimal qualifications for auditors.

The proposed standard provided that an agency shall enable the auditor to enter and tour facilities, review documents, and interview staff and inmates to conduct a comprehensive audit.

Finally, the proposed standard provided that an agency shall ensure that the auditor's final report is published on the agency's Web site if it has one, or is otherwise made readily available to the public.

Changes in Final Rule

In the final rule, the Department creates a single, unified auditing system for all facilities, except for lockups that do not hold detainees overnight, such as court holding facilities. The final standard addresses the frequency and scope of audits, required auditor qualifications, audit report contents and findings, audit corrective action plans, the audit appeals process, and the effect of the audit results on the Governor's certification of compliance.

The final standard provides that audits shall be conducted on a three-year cycle, with the first auditing period commencing one year after the effective date of the standards. Each year, the agency shall ensure that at least one-third of each facility type operated by the agency, or by a private organization on behalf of the agency, is audited. During the three-year cycle, the agency shall ensure that each facility operated by the agency, or by a private organization on behalf of the agency, is audited at least once. In some cases, the Department may recommend that an agency conduct an expedited audit if the Department has reason to believe that a particular facility may be experiencing problems relating to sexual abuse. The recommendation may also include referrals to resources that may assist the agency with PREA-related issues.

The Department will develop and issue an audit instrument that will provide guidance on the conduct of and contents of the audit.

The auditor shall review all relevant agency-wide policies, procedures, reports, internal and external audits, and accreditations for each facility type, as well as, at a minimum, a sampling of relevant documents and other records and information for the most recent one-year period. The auditor shall be permitted to request and receive copies of any relevant documents (including electronically stored information), and shall retain and preserve all documentation (such as video tapes and interview notes) relied upon in making audit determinations. Such documentation shall be provided to the Department upon request. The auditor shall interview a representative sample of inmates, staff, supervisors, and administrators, and shall have access to and observe all areas of the audited facilities.

The auditor shall be permitted to conduct private interviews with inmates, and inmates shall be permitted to send confidential information or correspondence to the auditor in the same manner as if they were

communicating with legal counsel. Auditors shall attempt to communicate with community-based or victim advocates who may have insight into relevant conditions in the facility.

The final standard provides that an audit shall be conducted by: (1) A member of a correctional monitoring body that is not part of, or under the authority of, the agency (but may be part of, or authorized by, the relevant State or local government); (2) a member of an auditing entity such as an inspector general's or ombudsperson's office that is external to the agency; or (3) other outside individuals with relevant experience. Thus, the final standard differs from the proposed standard in that it does not allow audits to be conducted by an internal inspector general or ombudsperson who reports directly to the agency head or to the agency's governing board.

Auditors shall be certified by the Department, pursuant to procedures to be developed, including training requirements.

For each standard, the auditor shall determine whether the audited facility reaches one of the following findings: ''Exceeds Standard'' (substantially exceeds requirement of standard); ''Meets Standard'' (substantial compliance; complies in all material ways with the standard for the relevant review period); or ''Does Not Meet Standard'' (requires corrective action). The audit summary shall indicate, among other things, the number of provisions the facility has achieved at each grade level.

A finding of ''Does Not Meet Standard'' with one or more standards shall trigger a 180-day corrective action period. The auditor and the agency shall jointly develop a corrective action plan to achieve compliance. The auditor shall take necessary and appropriate steps to verify implementation of the corrective action plan, such as reviewing updated policies and procedures or re-inspecting portions of a facility. After the 180-day corrective action period ends, the auditor shall issue a final determination as to whether the facility has achieved compliance with those standards requiring corrective action. If the agency does not achieve compliance with each standard, it may (at its discretion and cost) request a subsequent audit once it believes that it has achieved compliance.

An agency may lodge an appeal with the Department regarding any specific audit finding that it believes to be incorrect. If the Department determines that the agency has stated good cause for a re-evaluation, the agency may commission a re-audit by an auditor mutually agreed upon by the Department and the agency, at the agency's cost. The findings of the re-audit shall be final.

Section 115.501(a) provides that, in determining pursuant to 42 U.S.C. 15607(c)(2) whether the State is in full compliance with the PREA standards, the Governor shall consider the results of the most recent agency audits. Section 115.501(b) provides that the Governor's certification shall apply to all facilities in the State under the operational control of the State's executive branch, including facilities operated by private entities on behalf of the State's executive branch.

Comments and Responses

Comment. A wide range of comments were received on the question of whether audits should be conducted at set intervals or, alternatively, whether audits should be conducted only for cause, based upon a reason to believe that a particular facility or agency is materially out of compliance with the standards. Many comments recommended audits be conducted at set intervals; most such comments recommended audits occur on a three-year cycle, as the NPREC had recommended. A number of comments proposed a combination of automatic periodic audits plus for-cause audits. Two commenters recommended that audits be conducted both at random intervals and for cause. A number of comments recommended that audits be performed for cause only, or where a facility has received a large number of complaints regarding sexual abuse.

Several comments recommended various hybrid thresholds and timeframes for required audits. Some suggested a combination of ''streamlined'' audits and full audits, more frequent or less frequent audits depending upon prior audit results or reasons to suspect noncompliance, and different audit timelines for smaller agencies.

Several comments recommended audits only for a random sampling of all facilities, or of facilities not otherwise subject to accreditation. Several comments suggested that all facilities be audited. A number of other comments suggested various hybrid approaches, including: statistical reporting with random audits to confirm data; auditing of all large facilities and random sampling of small facilities; differential auditing cycles for large and small facilities; auditing of all facilities during the first auditing cycle with various triggers or random selection for subsequent audits; or annual internal audits with random sampling for external PREA audits or as requested by the agency.

A comment submitted by former members of the NPREC recommended that all facilities be audited within the first three years to establish a ''baseline'' that would guide future audits. Performance on the baseline audit would determine when the next regular audit would occur. The members suggested that if an agency or facility's compliance with the standards was determined to exceed 85 percent, the subsequent audit would occur five years later. If compliance was between 50 and 85 percent, the next audit would be in three years, and if compliance was less than 50 percent the next audit would be one year later. Former NPREC members further recommended that a random sample of agencies and facilities receive unscheduled audits after the initial baseline audit. In addition, the members recommended for-cause audits based upon reasons to suspect problems in specific agencies or facilities.

Response. The Department has determined that all facilities should be subject to audits, and that audits should occur at all facilities at least every three years, and at least one third of the facilities operated by an agency must be audited every year. The standard thus allows agencies substantial flexibility in scheduling audits within each three-year cycle while ensuring that facility audits occur regularly.

The Department has chosen not to require audits only for cause, as this would make it difficult to determine whether a broad range of facilities are complying with the standards, and would make it harder to assess whether a State is in full compliance with the statute. Under PREA, certification of full compliance by the Governor of a State is necessary in order to avoid a reduction in certain grant funding from the Department, unless the Governor commits to using the amount that otherwise would be forfeited for the purpose of enabling the State to achieve full compliance in future years. *See* 42 U.S.C. 15607(c)(2). In addition, requiring audits to be conducted only for cause could discourage agencies from strengthening their reporting and investigating procedures, for fear that revelation of incidents could result in an audit that the facility would otherwise escape.

The final standard does incorporate the concept of a for-cause audit by providing a mechanism through which the Department can recommend to an agency that an expedited audit be conducted on any facility if the Department has reason to believe that

the facility is experiencing problems related to sexual abuse. However, the Department concludes that a hybrid audit scheme would prove unnecessarily complex and would lack the required predictability and flexibility to permit agencies to budget and plan for the audits.

The Department believes that audits conducted through random sampling would be insufficient to assess the scope of compliance with the PREA standards. The Department is cognizant of the burden that audits pose on institutions but believes that the triennial cycle appropriately balances the level of effort and resources that will need to be expended. In addition, the Department anticipates that the actual audit complexity and duration will be scaled to the size and type of facility.

Comment. Many agency commenters recommended that agencies be allowed to audit themselves; by contrast, many advocacy commenters criticized the proposed standard for allowing internal inspectors general or ombudspersons to conduct audits, out of concern that permitting agency employees to audit the agency's facilities could compromise the objectivity and credibility of the auditing process. One commenter suggested that audits performed by an auditor within the agency should be subject to review by an independent agency or elected body.

Response. While internal audits may prove helpful in assessing an institution's performance, the Department believes that external audits are necessary to ensure that the audits are conducted, and are perceived to be conducted, independently and objectively. Accordingly, the final standard requires that the audit be performed by an auditor external to the agency. An audit may, however, be conducted by a sister governmental agency, including by an entity that ultimately reports to the same overarching department as the agency under audit.

Comment. Comments varied in response to NPRM Question 32, which asked to what extent, if any, agencies should be able to combine a PREA audit with an audit performed by an accrediting body or with other types of audits. A number of comments recommended that audits not be combined with other types of audits. Several comments suggested that PREA audits should be incorporated with accreditation or other audit types. A number of comments stated that State bodies that inspect local jails should be able to include PREA audits in the inspection process.

Response. The final standard places no restriction on auditor certification for individuals who are employed by an accrediting or oversight entity that is separate and independent from the agency. For example, a qualified individual within a State office of inspector general (if outside the agency) or a member of an accrediting body could obtain Department certification and, if not otherwise conflicted, would be permitted to conduct the PREA audit, or incorporate the PREA audit as part of a more comprehensive facility inspection program.

Comment. NPRM Question 33 asked whether the wording of any of the substantive standards should be revised in order to facilitate a determination of whether a jurisdiction is in compliance with the standard. Some comments suggested that the standards be expressed using objective criteria. Other comments recommended that the standards be written in a performance-based format, or subject to specific outcome measures. Still others suggested a combination of qualitative and quantitative standards. A number of comments suggested requiring that agencies fully document their efforts to comply with the standards. Finally, one comment recommended that the auditor have discretion to determine whether a facility is complying with the standard.

Response. The Department has attempted to incorporate objective criteria and written documentation requirements wherever practicable, although auditors will necessarily have some discretion to determine compliance regarding certain standards. The Department intends to jointly develop, with the National Resource Center for the Elimination of Prison Rape, comprehensive auditing instruments for the various facility types and sizes that will provide guidance to the auditor on determining compliance. In addition, the Department will develop uniform training and certification requirements for individual auditors, and may periodically issue interpretive guidance regarding the PREA standards.

The Department declines to incorporate into the standards specific outcome measures. While performance-based standards facilitate compliance assessments, it is difficult to employ such standards effectively to combat sexual abuse in confinement facilities. An increase in incidents reported to facility administration may reflect increased abuse due to the facility's inability to protect inmates from harm. Alternatively, it might reflect inmates' increased willingness to report abuse, due to the facility's success at assuring inmates that reporting abuse will yield positive outcomes and not result in retaliation.

Comment. Several commenters recommended that auditors have expertise in, or receive specialized training in, such topics as working with victims of sexual abuse, applicable civil rights laws, adolescent and child development, and crisis counseling.

Response. The Department intends to develop and issue auditor training requirements, and will work with the National Resource Center for the Elimination of Prison Rape (or other contracted entity) to develop an audit training curriculum.

Comment. A number of comments recommended that the auditor receive unfettered facility access, including access to inmates, full access to a facility's physical plant and documents, the ability to consult with the PREA coordinator, access to facility personnel, and the ability to conduct unannounced inspections.

Response. The final standard incorporates many of these elements to enable thorough audits. However, the Department declines to require that auditors be permitted to conduct unannounced facility audits, as this could prove inordinately burdensome for facility and agency personnel.

Comment. Former NPREC members recommended that the Department's Office of the Inspector General conduct audits of BOP facilities.

Response. BOP facilities will be audited pursuant to the auditing standard. However, the Department declines to mandate in the standard the specific entity that will conduct BOP audits.

Comment. Two commenters recommended that the audit reports describe the auditor's methodology, the evidence used to support each audit finding, and recommendations for any required corrective action.

Response. The final standard includes these elements.

Comments. NPRM Question 35 asked to what extent, if any, audits should bear on determining whether a State is in full compliance with PREA. Several comments recommended that the audits be the primary basis for determining ''full compliance.'' A number of other comments suggested that the audit results be one of a number of factors in determining ''full compliance.'' Some comments suggested that audit results have only a marginal bearing on the determination, or be relevant to determining only State-level compliance. A number of comments suggested that audit results, combined with appropriate and verified corrective

action, determine State-level ''full compliance.'' One comment suggested that the audit results, combined with an appropriate explanation from the Governor, enable the State to certify ''full compliance.''

Response. The Department intends the audits to be a primary factor in determining State-level ''full compliance.'' Accordingly, the final rule requires the Governor to consider the most recent audit results in making his or her certification determination, which shall apply to facilities under the operational control of the State's executive branch, including facilities operated by private entities on behalf of the State's executive branch.

IV. Regulatory Certifications

Executive Orders 13563 and 12866—Regulatory Planning and Review

This final rule has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' as recently reaffirmed and supplemented by Executive Order 13563, ''Improving Regulation and Regulatory Review.'' The Department has determined that this final rule is a ''significant regulatory action'' under Executive Order 12866, § 3(f)(1), and accordingly has submitted it to the Office of Management and Budget (OMB) for review.

Executive Order 12866 requires Federal agencies to conduct a regulatory impact assessment (benefit-cost analysis) for any ''significant regulatory action'' likely to result in a rule that may have an annual impact on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. *See* Executive Order 12866, Sec. 6(a)(3)(C).

The Department has concluded that the economic impact of its adoption of the final rule, if complied with by all entities to which it applies, is likely to exceed this $100 million threshold. Assuming full nationwide compliance, the standards would affect the management of all State, local, privately operated, and Department of Justice confinement facilities, which collectively house over 2.4 million individuals at any given time and which spent more than $79.5 billion in 2008. *See* BJS, Justice Expenditure and Employment Extracts 2008, advance estimate (unpublished).

The final rule, moreover, ''materially alters * * * the rights and obligations of grant recipients,'' and ''raise[s] novel legal or policy issues.'' Executive Order 12866, Secs. 3(f)(3), (4). Accordingly, in compliance with OMB Circular A–4, the Department has prepared a Regulatory Impact Assessment (RIA) to accompany the final rule.

Regulatory Impact Assessment

The RIA is available in full at *http://www.ojp.usdoj.gov/programs/pdfs/prea_ria.pdf* and is summarized here. The RIA assesses, and monetizes to the extent feasible, the benefits of combating rape and sexual abuse in America's prisons, jails, lockups, community confinement facilities, and juvenile facilities, and the costs of full nationwide compliance with the final rule. It also summarizes the comments relating to the costs and benefits of the standards that the Department received in response to the NPRM and the Initial Regulatory Impact Assessment (IRIA).

The cost estimates set forth in the RIA are the costs of full nationwide compliance with all of the standards and their implementation in all covered facilities. The Department concludes that full nationwide compliance with the standards would cost the correctional community, in the aggregate, approximately $6.9 billion over the period 2012–2026, or $468.5 million per year when annualized at a 7 percent discount rate. The average annualized cost per facility of compliance with the standards is approximately $55,000 for prisons, $50,000 for jails, $24,000 for community confinement facilities, and $54,000 for juvenile facilities. For lockups, the average annualized cost per agency is estimated at $16,000.

However, these figures are potentially misleading. PREA does not require full nationwide compliance with the Department's standards, nor does it enact a mechanism for the Department to direct or enforce such compliance; instead, the statute provides certain incentives for State (but not local or privately operated) confinement facilities to implement the standards. Fiscal realities faced by confinement facilities throughout the country make it virtually certain that the total actual outlays by those facilities will, in the aggregate, be less than the full nationwide compliance costs calculated in this RIA. Actual outlays incurred will depend on the specific choices that State, local, and private correctional agencies make with regard to adoption of the standards, and correspondingly on the annual expenditures that those agencies are willing and able to make in choosing to implement the standards in their facilities. The Department has not endeavored in the RIA to project those actual outlays.

Summary of Cost Justification Analysis

In developing the final rule, the Department was constrained by two separate and independent limitations relating to the potential costs of the standards. The first was the requirement, set forth in Executive Order 12866, that each agency ''propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs,'' recognizing that some benefits and costs are difficult to quantify. Executive Order 12866, Sec. 1(b)(6). Executive Order 13563, moreover, directs agencies ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' Executive Order 13563, Sec. 1(c). The second was the provision, set forth in PREA itself, prohibiting the Attorney General from adopting any standards ''that would impose substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities.'' 42 U.S.C. 15607(a)(3). The RIA addresses both sets of limitations and concludes that the final rule does not contravene either constraint, and is in fact fully justified under both analyses.

With respect to the analysis called for by the Executive Orders, the RIA undertakes a break-even analysis to demonstrate that the anticipated costs of full nationwide compliance with the PREA standards are amply justified by the anticipated benefits. The results of this break-even analysis are summarized in Table 2. As shown there, using the Department's preferred estimation method, for the costs of full nationwide compliance to break even with the monetized benefits of avoiding prison rape, the standards would have to be successful in reducing the annual number of prison sexual abuse victims by about 1,671, for a total reduction from the baseline over fifteen years of about 25,000 victims.[38] As a

[38] These figures include all facility types and all types of sexual abuse (from the most to the least severe), and take into account the fact that many victims are victimized multiple times (i.e., an avoided victim subsumes all of the incidents of sexual abuse that victim experiences). In the RIA, the Department calculates the break-even figures in six different ways corresponding to different methods of calculating the baseline prevalence of prison sexual abuse and different approaches to monetizing the value of avoiding prison sexual abuse. The figures in Table 2 reflect the Department's preferred approach among these six alternatives. When reflected as a range, the six approaches collectively provide that, for the costs of full nationwide compliance to break even with the monetized benefits of avoiding prison rape, the standards would have to be successful in reducing

comparison, the RIA estimates that in 2008 more than 209,400 persons were victims of sexual abuse in America's prisons, jails, and juvenile centers, of which at least 78,500 prison and jail inmates and 4,300 youth in juvenile facilities were victims of the most serious forms of sexual abuse, including forcible rape and other nonconsensual sexual acts involving injury, force, or high incidence.

TABLE 2—SUMMARY OF BREAK-EVEN ANALYSIS FOR PREA STANDARDS [39]

[In millions of dollars]

	Prisons	Jails	Lockup	Community confinement facilities	Juvenile	Total
Prevalence	89,688	109,181	Unknown	Unknown	10,553	209,422
Value of 1% Reduction	$206.4	$260.1	Unknown	Unknown	$52.4	
Value of 1 Victim Avoided	.....	.....	$0.25	$0.25	.....	.....
Cost	$64.9	$163.4	$95.5	$12.8	$131.9	$468.5
Breakeven Percent	0.32%	0.64%	Unknown	Unknown	2.55%	.....
Breakeven Number of Victims	282	686	385	52	266	1671

The Department believes it reasonable to expect that the standards, if fully adopted and complied with, would achieve at least this level of reduction in the prevalence of prison sexual abuse. Taking into account the considerable non-monetized benefits of avoiding prison rape, the justification for the standards becomes even stronger. Of course, if the nation's confinement facilities spend less annually than full nationwide compliance is estimated to require, then the annual reduction in the number of prison sexual abuse victims that would need to be achieved in order for actual outlays to break even with benefits would be correspondingly lower.

With respect to the analysis that Congress required in PREA, the RIA concludes that the costs of full nationwide compliance do not amount to ''substantial additional costs'' when compared to total national expenditures on correctional operations. In the most recent tabulation, correctional agencies nationwide spent approximately $79.5 billion on correctional operations in 2008. As noted, the RIA estimates that full nationwide compliance with the final standards would cost these agencies approximately $468.5 million per year, when annualized over 15 years at a 7 percent discount rate, or a mere 0.6 percent of total annual correctional expenditures in 2008. The Department concludes that this does not amount to substantial additional costs.

Measuring the Relevant Baseline

As a starting point, the RIA measures the baseline level of prison rape and sexual abuse in prisons, jails, and juvenile facilities. It estimates the annual prevalence of six categories of inappropriate sexual contact in adult prisons and jails, and five different categories in juvenile facilities. The precise definitions of these categories are set forth in detail in the RIA, but these types of sexual contact are essentially differentiated based on the existence and nature of force or threat of force, the nature and intrusiveness of the physical contact, and how often the victim has experienced abuse (*i.e.,* whether the victim has experienced a low or high incidence of contact), among other factors.

Relying largely on tabulations made by BJS and the Office of Juvenile Justice and Delinquency Prevention, the RIA examines the available statistics on the prevalence of each type of inappropriate sexual contact [40] and addresses a number of issues with those statistics, including the problem of serial victimization (prevalence vs. incidence),[41] cross-section vs. flow,[42] underreporting of sexual victimization (false negatives), and false allegations (overreporting). The RIA also describes difficulties in measuring the prevalence of sexual abuse in community confinement facilities and lockups.[43]

the annual number of prison sexual abuse victims by between 1,667 and 2,329, for a total reduction from the baseline over fifteen years of about 25,000–35,000 victims.

[39] Prevalence figures reflect the Department's ''principal'' approach to determining prevalence (among the three alternative approaches discussed below) and include all forms of sexual abuse. As explained in the RIA, prevalence figures for lockups and community confinement facilities are unknown; the total for prisons, jails, and juvenile centers under the principal approach is 209,422.

The ''value of 1% reduction'' row sets forth the RIA's estimate of the monetizable value (in millions of dollars) of the benefit of a 1% reduction from the baseline annual prevalence of sexual abuse in prisons, jails, and juvenile centers, using the Department's preferred methodology, the victim compensation model, and taking into account the fact that many victims of prison rape are victimized multiple times. The ''value of 1 victim avoided'' row sets forth the corresponding estimate for lockups and community confinement facilities, but sets forth the value (again in millions) of avoiding a single victim of abuse.

Cost figures represent the cost of full nationwide compliance with all of the PREA standards, in the aggregate, in millions of dollars. ''Breakeven percent,'' for prisons, jails, and juvenile centers, shows the total percentage reduction from the baseline annual prevalence of prison sexual abuse that the standards would have to achieve in each sector in order for their annual benefits, in monetary terms, to break even with their annual costs, again assuming full nationwide compliance. ''Breakeven Number of Victims'' shows how many individual victims of prison sexual abuse the standards would have to be successful in preventing each year, in each sector (again taking into account the phenomenon of serial victimization), for the standards' annual benefits, in monetary terms, to break even with the annual costs of full nationwide compliance.

[40] *See* BJS, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2008–09* (NCJ 231169) (Aug. 2010); BJS, *Sexual Victimization in Juvenile Facilities Reported by Youth,* 2008–09 (NCJ 228416) (Jan. 2010).

[41] Prevalence essentially measures the number of victims of sexual abuse over a period of time, whereas incidence refers to the number of discrete victimizations over that period. The difference between the two arises from the fact that many prison rape victims are victimized many times.

[42] The estimates of prevalence are based on surveys of inmates, who are asked to state whether, as of the date the survey is administered, they have experienced sexual abuse in that facility during the previous twelve months. If the answer is affirmative, the inmate is asked follow-up questions about the nature and frequency of the abuse. In a cross-section (also known as ''stock'') approach to estimating prevalence, the estimates are based on the responses given by the inmates who happen to be at the facility on the day the survey was administered. However, this approach risks significantly understating the actual prevalence, especially in jails, because the majority of inmates remain in their facility for less than one year, and there will have been many inmates who were at the facility earlier during the twelve-month survey period but who are no longer there when the survey is administered. A flow approach to estimating prevalence compensates for this phenomenon by extrapolating from the cross-sectional figures an estimate of the total number of victims among the total population of inmates who flowed through the facility during the twelve-month period.

[43] At the time the RIA was prepared, the Department lacked data regarding the prevalence of sexual abuse in community confinement facilities. A BJS study of former State prisoners that was finalized in May 2012, too late for incorporation

Continued

The RIA presents three alternatives for estimating the prevalence of sexual abuse, each relying on different assumptions to account for the possibility of underreporting (false negatives) and overreporting (false positives) of sexual abuse. Under the ''principal'' method—the one the Department prefers among the three—no adjustment is made to the prevalence estimates to account either for false negatives (sexual abuses that occurred but were never reported) or false positives (sexual abuses that were reported by inmates but that did not actually occur). The ''adjusted'' approach uses an upper bound assumption as to the number of false negatives and a conservative approach to the adjustment for false positives; the ''lower bound'' approach uses a lower bound assumption as to the number of false negatives and a less conservative approach to adjusting for false positives. Under the principal approach, the RIA concludes that in 2008 more than 209,400 persons were victims of sexual abuse in America's prisons, jails, and juvenile centers. Of these, at least 78,500 were prison and jail inmates and 4,300 were youth in juvenile facilities who were victims of the most serious forms of sexual abuse, including forcible rape and other nonconsensual sexual acts involving injury, force, or high incidence.

Table 3 shows the estimated baseline prevalence of rape and sexual abuse in adult prison and jail facilities under each of the RIA's prevalence estimation methods. Table 4 shows the corresponding estimates for juvenile facilities, and Table 5 shows the composite prevalence estimates among all facility types.[44]

TABLE 3—BASELINE PREVALENCE OF SEXUAL ABUSE, ADULT PRISON AND JAIL FACILITIES, USING ALTERNATIVE PREVALENCE ESTIMATION APPROACHES, BY TYPE OF INCIDENT, 2008

	Adult prisons			Adult jails		
	Principal	Adjusted	Lower bound	Principal	Adjusted	Lower bound
Nonconsensual Sexual Acts—High	32,900	33,100	25,600	45,600	43,000	26,000
Nonconsensual Sexual Acts—Low	11,300	11,600	8,800	8,900	7,900	5,000
''Willing'' Sex with Staff	17,600	17,800	13,500	15,500	14,800	10,400
Abusive Sexual Contacts—High	7,300	7,000	6,100	8,500	7,800	6,300
Abuse Sexual Contacts—Low	10,900	11,200	9,000	14,400	13,600	10,700
Staff Sexual Misconduct Touching Only	9,700	9,400	7,500	16,300	14,200	10,800
Total	89,700	90,100	70,500	109,200	101,300	69,200

TABLE 4—BASELINE PREVALENCE OF SEXUAL ABUSE, JUVENILE FACILITIES, USING ALTERNATIVE PREVALENCE ESTIMATION APPROACHES, BY TYPE OF INCIDENT, 2008

	Principal	Adjusted	Lower bound
Serious Sexual Acts—High	4,300	4,600	3,800
''Willing'' Sex With Staff—High	2,800	2,700	2,500
Serious Sexual Acts—Low	2,000	2,700	1,800
Other Sexual Acts—High	600	600	500
Other Sexual Acts—Low	900	1,000	900
Total	10,600	11,600	9,500

TABLE 5—BASELINE PREVALENCE OF SEXUAL ABUSE, SUMMARY CHART

	Principal	Adjusted	Lower bound
Prisons	89,700	90,100	70,500
Jails	109,200	101,300	69,200
Juveniles	10,600	11,600	9,500
Total	209,400	203,000	149,200

Estimating the Monetized Unit Benefit of Avoiding a Prison Rape or Sexual Abuse

As a number of commenters observed, placing a monetary value on avoided sexual abuse confronts considerable methodological difficulties. One commenter remarked that ''estimating the monetary 'costs' of crime is at best a fraught and imperfect effort, particularly when dealing with crimes such as sexual abuse whose principal cost is due to the pain, suffering, and quality of life diminution of the victims.'' Executive Order 12866 nevertheless instructs agencies to measure quantifiable benefits ''to the fullest extent that [they] can be usefully estimated.'' Executive Order 12866, Sec. 1(a); *see also* Executive Order 13563, Sec. 1(c) (''[E]ach agency is directed to

into the prevalence assessments of the RIA, provides for the first time some data regarding such prevalence. See BJS, *Sexual Victimization Reported by Former State Prisoners,* 2008 (NCJ 237363) (May 2012). The Department remains unaware of any data regarding the prevalence of sexual abuse in lockups.

[44] For the definitions of the various types of sexual conduct listed in these tables, see Tables 1.1 and 1.2 in the RIA.

use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.''). Some uncertainty in such estimates is not itself reason to abandon the effort.

The RIA estimates the monetary value of certain benefits of avoiding prison sexual abuse using values derived from general literature assessing the cost of rape,[45] with adjustments made to account for the unique characteristics of sexual abuse in the prison setting. Using an approach known as the willingness to pay (WTP) model, the RIA first monetizes the benefit of avoiding sexual abuse in a confinement facility by consulting studies that have estimated how much society is willing to pay for the reduction of various crimes, including rape, and then assessing whether the conclusions of those studies would be different in the specific context of sexual abuse in confinement facilities. This approach yields a reliable estimate of the costs of the most serious categories of sexual abuse assessed in the RIA,[46] but because of limitations in the way the underlying studies were conducted, it cannot be effectively used to monetize the cost of the less serious categories of sexual abuse.

In part because of these limitations, the RIA also uses an alternative approach known as the victim compensation or willingness-to-accept (WTA) model, which estimates how much the average victim of prison rape would be willing to accept as compensation for injuries suffered in the assault, including intangible injuries such as pain, suffering, and diminished quality of life. To do this, the RIA assesses certain monetizable costs of prison rape to the victim, such as the costs of medical and mental health care, and adds an element, drawn primarily from jury verdicts, to cover the intangible costs associated with pain and suffering. All of these costs were identified by reviewing the literature on the cost of rape generally, and then extrapolating the analogous costs in confinement facilities. Although the RIA calculates avoidance benefits on a per victim basis, it accounts for the fact that many victims of prison rape are victimized multiple times.

Thus, the RIA essentially uses a hybrid approach that combines the WTP and WTA elements: For the one category of sexual conduct as to which an estimate using the WTP was possible (the most serious category for adult victims), it identifies a range of avoidance benefit values, with the WTP estimate at one bound and the WTA estimate on the other; for the remaining categories of conduct, as to which a WTP estimate was not possible, the RIA uses only the WTA estimate. Using this approach, the RIA derives monetized values for avoiding each of the six types of sexual contact (five for juveniles), depending upon whether the victim is a juvenile or an adult. These values are depicted in Tables 6 and 7. The RIA estimates the monetizable benefit to an adult of avoiding the highest category of prison sexual misconduct (nonconsensual sexual acts involving injury or force, or no injury or force but high incidence) as worth about $310,000 per victim using the willingness to pay model and $480,000 per victim under the victim compensation model. For juveniles, who typically experience significantly greater injury from sexual abuse than adults, the corresponding category is assessed as worth $675,000 per victim under the victim compensation model. (A willingness to pay estimate was not calculated for juveniles.) These estimates are higher than in the IRIA because of changes the Department made, in response to public comments, to the definitions of the different types of sexual abuse and to the methodologies for monetizing the benefit of avoiding each type.

TABLE 6—AVOIDANCE BENEFIT VALUES FOR SEXUAL ABUSE, ADULT PRISON AND JAIL FACILITIES, BY VICTIMIZATION TYPE AND VALUATION METHOD

	WTP	Victim compensation (WTA)
Nonconsensual Sexual Acts—High	$310,000	$480,000
Nonconsensual Sexual Acts—Low	.....	160,000
''Willing'' Sex With Staff	.....	160,000
Abusive Sexual Contacts—High	.....	5,200
Abusive Sexual Contacts—Low	.....	600
Staff Sexual Misconduct Touching Only	.....	600

TABLE 7—UNIT AVOIDANCE VALUES FOR SEXUAL ABUSE, JUVENILE FACILITIES, BY VICTIMIZATION TYPE

	Victim compensation (WTA)
Serious Sexual Acts—High	$675,000
''Willing'' Sex With Staff—High	672,000
Serious Sexual Acts—Low	225,000
Other Sexual Acts—High	7,300
Other Sexual Acts—Low	900

The RIA next calculates the maximum monetizable benefit to society of totally eliminating each of the types of inappropriate sexual contact, by multiplying the baseline prevalence of such events by the unit benefit of an avoided victim. As depicted in Table 8, under the Department's principal approach for estimating prevalence, and using the victim compensation model, the RIA determines that the maximum monetizable cost to society of prison rape and sexual abuse (and correspondingly, the total maximum benefit of eliminating it) is about $46.6 billion annually for prisons and jails, and an additional $5.2 billion annually for juvenile facilities.[47]

It bears cautioning, however, that the Department has not estimated in the RIA the expected monetized benefit of the standards themselves but has instead opted for a break-even approach that estimates the number of victims that would need to be avoided (taking into account the fact that many victims are victimized multiple times) for the benefits of the standards to break even with the costs of full nationwide compliance. Thus, the RIA does not estimate that the standards will actually yield an annual monetized benefit of $52 billion, except in the hypothetical scenario where the standards would, by themselves, lead to the complete elimination of prison rape and sexual abuse. The actual monetized benefit of the standards will certainly be less than this hypothetical figure and will depend on a number of factors, including the extent to which facilities comply with

[45] *See, e.g.,* National Institute of Justice Research Report, *Victim Costs and Consequences: A New Look* (NCJ 155282) (Jan. 1996), available at *http://www.ncjrs.gov/pdffiles/victcost.pdf;* Ted R. Miller et al., Minn. Dep't of Health, *Costs of Sexual Violence in Minnesota* (July 2007), available at *http://www.pire.org/documents/mn_brochure.pdf;* Mark A. Cohen et al., *Willingness-to-Pay for Crime Control Programs,* 42 Criminology 89 (2004).

[46] These costs translate to benefits for the purpose of the RIA—*i.e.,* the benefits that would accrue from avoiding such incidents.

[47] The RIA calculates these figures six different ways, using the three different prevalence estimation approaches (principal, adjusted, and lower bound), and the two different approaches to monetizing avoidance benefit values (WTP and WTA). Expressed as a range that captures all six approaches, the RIA determines that the maximum monetizable cost to society of rape and sexual abuse in prisons, jails, and juvenile facilities (and correspondingly, the total maximum benefit of eliminating it from those facilities) ranges from $26.9 billion to $51.9 billion. These figures exclude the cost to society of rape and sexual abuse in community confinement facilities and lockups because of the unavailability of data regarding the prevalence of sexual abuse in those facilities.

the standards, and the extent to which the standards are effective in achieving their goals.

TABLE 8—TOTAL COST OF SEXUAL ABUSE, ACROSS PRISONS, JAILS, AND JUVENILE FACILITIES, VICTIM COMPENSATION METHOD, BY PREVALENCE APPROACH

[In millions of dollars]

	Principal	Adjusted	Lower bound
Prisons	$20,637	$20,814	$16,051
Jails	26,011	24,493	15,083
Juveniles	5,239	5,532	4,654
Total	51,887	50,839	35,788

Non-Monetizable Benefits

Executive Order 13563 states that, ''[w]here appropriate and permitted by law, each agency may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.'' Executive Order 13563, Sec. 1(c). Under Executive Order 12866, costs and benefits must ''include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify but nevertheless essential to consider.'' Executive Order 12866, Sec. 1(a). Benefits of regulatory action include ''the enhancement of health and safety, the protection of the natural environment, and the elimination or reduction of discrimination or bias.'' *Id.*

In concluding its assessment of the benefits of prison rape avoidance, the RIA identifies a number of benefits that cannot be monetized. These are some of the most important and consequential benefits of the final rule, and the discussion in the RIA describes both the nature and scale of those benefits so that they can be appropriately factored into the analysis. For example, the RIA examines benefits for rape victims, for inmates who are not rape victims, for families of victims, for prison administrators and staff, and for society at large. These benefits include those relating to public health and public safety, as well as economic benefits and existence value benefits. The RIA also describes benefits to inmates in lockups and community confinement facilities, as to which information was lacking relating to the baseline prevalence of sexual abuse.

Additionally, Congress predicated PREA on its conclusion—consistent with decisions by the Supreme Court—that ''deliberate indifference to the substantial risk of sexual assault violates prisoners' rights under the Cruel and Unusual Punishment Clause of the Eighth Amendment.'' 42 U.S.C. 15601(13) (citing *Farmer* v. *Brennan,* 511 U.S. 825 (1994)). The individual rights enshrined in the Constitution express our nation's deepest commitments to human dignity and equality, and American citizens place great value on knowing that their government aspires to protect those rights to their fullest extent. In thinking about the qualitative benefits that will accrue from the implementation of the final rule, these values carry great weight.

Cost Analysis

The RIA presents a detailed analysis of the costs of full nationwide compliance with the standards in the final rule. The RIA concludes that full nationwide compliance with the standards would cost the correctional community approximately $6.9 billion over the period 2012–2026, or $468.5 million per year when annualized at a 7 percent discount rate. The details of the RIA's cost estimates are summarized in Tables 9–14:

TABLE 9: NUMBER OF FACILITIES ASSUMED TO ADOPT AND IMPLEMENT THE STANDARDS, FOR COST ANALYSIS PURPOSES [48]

Type	Number of facilities
Prisons (Federal)	117
Prisons (State)	1,190
Jails	2,860
Lockups (Police)	3,753
Lockups (Court)	2,330
Community Confinement	529
Juvenile	2,458

[48] For detailed sources, see RIA, at p. 70, n. 108.

Table 10: Estimated Annualized Cost of Full Compliance with Aggregated Standards, in Millions of Dollars, by Facility Type

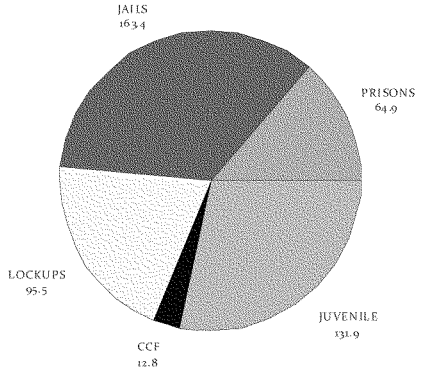

TABLE 11—ESTIMATED COST OF FULL STATE AND LOCAL COMPLIANCE WITH THE PREA STANDARDS, IN THE AGGREGATE, BY YEAR AND BY FACILITY TYPE

[In Millions of dollars]

Year	Prisons	Jails	Lockups	Community confinement facilities	Juveniles	Total all facilities
2012	$87.2	$254.6	$180.1	$27.8	$196.0	$745.8
2013	55.2	161.0	122.0	16.8	93.3	448.5
2014	58.3	157.9	106.6	14.2	92.1	429.2
2015	59.2	154.6	93.7	12.1	94.9	414.5
2016	61.3	153.5	87.3	11.1	109.3	422.6
2017	61.5	152.4	83.6	10.6	151.9	460.1
2018	62.9	151.3	80.1	10.1	147.3	451.8
2019	63.1	150.7	77.5	9.8	144.7	445.8
2020	64.3	150.1	75.0	9.4	142.2	441.0
2021	65.7	149.9	73.2	9.2	140.4	438.3
2022	65.9	150.1	72.0	9.0	139.2	436.2
2023	67.1	150.1	70.8	8.9	138.0	434.9
2024	67.1	149.9	69.6	8.7	136.7	432.0
2025	67.9	149.5	68.4	8.5	135.5	429.8
2026	67.6	148.8	67.2	8.4	134.3	426.3
15-yr Total	974.2	2,384.6	1,327.3	174.8	1,995.8	6,856.7
Present Value	591.2	1,488.4	869.8	116.6	1,201.4	4,267.4
Annual	64.9	163.4	95.5	12.8	131.9	468.5

TABLE 12—ESTIMATED AVERAGE ANNUALIZED COMPLIANCE COST PER UNIT FACILITY, BY TYPE

Type	Cost per unit facility
Prisons	$54,546
Jails	49,959
Lockups (per Agency)	15,700
Community Confinement Facilities	24,190
Juvenile Facilities	53,666

Table 13: Estimated Cost of Full Nationwide Compliance with PREA Standards, Total Across All Facility Types, by Standard and by Year, in Thousands of Dollars

Year	115.11	115.13	115.14	115.16	115.17	115.21-.22	Training	115.41-.42	115.51, 115.53	115.52	115.71	Audits	Total
2012	$165,711	$85,980	$16,202	$29,298	$11,031	$12,803	$310,128	$67,302	$11,774	$4,163	$24,431	$6,937	$745,760
2013	$159,083	$79,991	$0	$29,285	$11,031	$12,474	$55,702	$59,765	$6,263	$3,688	$24,236	$6,937	$448,454
2014	$149,405	$70,430	$0	$29,285	$11,031	$12,474	$55,702	$59,765	$6,263	$3,688	$24,236	$6,937	$429,215
2015	$137,076	$68,027	$0	$29,285	$11,031	$12,474	$55,702	$59,765	$6,263	$3,688	$24,236	$6,937	$414,484
2016	$125,278	$87,948	$0	$29,285	$11,031	$12,474	$55,702	$59,765	$6,263	$3,688	$24,236	$6,937	$422,606
2017	$111,358	$139,334	$0	$29,285	$11,031	$12,474	$55,702	$59,765	$6,263	$3,688	$24,236	$6,937	$460,073
2018	$98,234	$144,176	$0	$29,285	$11,031	$12,474	$55,702	$59,765	$6,263	$3,688	$24,236	$6,937	$451,790
2019	$88,291	$148,092	$0	$29,285	$11,031	$12,474	$55,702	$59,765	$6,263	$3,688	$24,236	$6,937	$445,763
2020	$78,879	$152,738	$0	$29,285	$11,031	$12,474	$55,702	$59,765	$6,263	$3,688	$24,236	$6,937	$440,997
2021	$72,118	$156,816	$0	$29,285	$11,031	$12,474	$55,702	$59,765	$6,263	$3,688	$24,236	$6,937	$438,314
2022	$67,610	$159,253	$0	$29,285	$11,031	$12,474	$55,702	$59,765	$6,263	$3,688	$24,236	$6,937	$436,244
2023	$63,103	$162,373	$0	$29,285	$11,031	$12,474	$55,702	$59,765	$6,263	$3,688	$24,236	$6,937	$434,857
2024	$58,596	$164,029	$0	$29,285	$11,031	$12,474	$55,702	$59,765	$6,263	$3,688	$24,236	$6,937	$432,005
2025	$54,088	$166,337	$0	$29,285	$11,031	$12,474	$55,702	$59,765	$6,263	$3,688	$24,236	$6,937	$429,806
2026	$49,581	$167,336	$0	$29,285	$11,031	$12,474	$55,702	$59,765	$6,263	$3,688	$24,236	$6,937	$426,297
Total	**$1,478,411**	**$1,952,859**	**$16,202**	**$439,290**	**$165,466**	**$187,442**	**$1,089,957**	**$904,007**	**$99,455**	**$55,794**	**$363,731**	**$104,049**	**$6,856,664**
NPV	**$999,406**	**$1,094,915**	**$15,142**	**$266,738**	**$100,470**	**$113,921**	**$745,111**	**$551,376**	**$62,193**	**$34,034**	**$220,919**	**$63,178**	**$4,267,403**
Ann.	**$109,729**	**$120,216**	**$1,663**	**$29,286**	**$11,031**	**$12,508**	**$81,809**	**$60,538**	**$6,828**	**$3,737**	**$24,256**	**$6,937**	**$468,538**

Table 14: Relative Cost of Full Nationwide Compliance with Various Standards

Again, these tables reflect the estimated costs of full nationwide compliance, which will occur only if all State, local, and private confinement facilities adopt the standards contained in the final rule and then immediately and fully implement them. In this sense, the cost impact of the final rule, as represented here, is essentially theoretical—in effect treating the standards as if they were binding regulations on State and local confinement facilities.

The true cost impact (which the RIA does not purport to assess), like the true impact of the final rule on preventing, detecting, and minimizing the effects of sexual abuse, will depend on the specific choices and expenditures that State, local, and private correctional agencies make with regard to adoption and implementation of the standards.

In assessing the nationwide compliance costs for many of the standards, the RIA relies on work performed by the consulting firm Booz Allen Hamilton, with which the Department contracted to undertake cost analyses, first of the standards recommended by the NPREC, then of the standards proposed in the NPRM, and finally of the standards contained in the final rule. Booz Allen's initial cost analysis was based on a field study in which it surveyed 49 agencies of various types from across the country about the costs they would incur to comply with various aspects of the NPREC's recommended standards. Each of the final standards is examined in detail in the RIA to determine the full implementation costs of that standard. Where possible, the RIA distinguishes among costs applicable to prisons, jails, juvenile facilities, community confinement facilities, and lockups.

Many of the standards are assessed as likely having minimal to no associated

compliance costs, including §§ 115.15, 115.215, and 115.315, which, among other things, impose a general ban on cross-gender pat-down searches of female inmates in adult prisons and jails and in community confinement facilities, and of male and female residents in juvenile facilities; and §§ 115.83, 115.283, and 115.383, which requires agencies to provide medical and mental health care assessments and treatment to victims and to certain abusers. The conclusion of zero cost for these standards is predicated on a high level of baseline compliance and on the expectation that agencies will adopt the least costly means of complying with requirements when given flexibility to determine how to apply those requirements to the specific characteristics of their agencies.

On an annualized basis, the most expensive standards, by the RIA's estimate, are: §§ 115.13, 115.113, 115.213, and 115.313, which relate to staffing, supervision, and video monitoring and would impose annual compliance costs of $120 million per year if fully adopted; §§ 115.11, 115.111, 115.211, and 115.311, which establish a zero-tolerance policy and require agencies to designate an agency-wide PREA coordinator and facilities to designate a PREA compliance manager, and would cost $110 million annually if fully adopted; the training standards (§§ 115.31–115.35, 115.131–115.132, 115.134, 115.231–115.235, and 115.331–115.335), which the RIA estimates would cost $82 million per year if fully adopted; and the screening standards (§§ 115.41–115.42, 115.141, 115.241–115.242, and 115.341–115.342), which would have an estimated $61 million in annual costs if there were full nationwide compliance. Together, full nationwide compliance with these four sets of standards would cost $372 million annually, or about 80 percent of the total for all of the standards.

Booz Allen's analyses assessed only the costs that State, local, and private agencies would incur if they adopted and implemented the standards in their own facilities. Thus, Booz Allen's analyses do not include the compliance costs of those Federal facilities to which the final rule applies. The RIA supplements these analyses with the Department's own internal assessments of the costs that its two relevant components—the Bureau of Prisons and the United States Marshals Service—would incur in implementing the standards in the facilities they operate or oversee. As shown in Table 15, these two components expect to spend approximately $1.75 million per year over fifteen years to comply with the standards.

TABLE 15—ESTIMATED COST OF COMPLIANCE WITH PREA STANDARDS FOR DEPARTMENT OF JUSTICE ENTITIES, BY STANDARD, ANNUALIZED OVER 2012–2026 AT 7% DISCOUNT RATE

Standard	BOP	USMS
115.11 Zero Tolerance	$797,000	$445,000
115.21 Evidence Protocol	37,000	0
115.31–.35 Training	20,000	103,000
115.41 Screening	500	0
115.53 Inmate Reporting	9,500	0
115.93, .402–.405 Audits	312,000	0
Total	1,176,000	548,000

Comparison to Alternatives

Executive Order 13563 calls upon agencies, ''in choosing among alternative regulatory approaches,'' to select ''those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).'' Executive Order 13563, sec. 1(b)(3). The Attorney General has concluded that, among the available alternatives, the standards in the final rule define measures and programs that, when implemented, will prove effective in accomplishing the goals of the statute while also promoting flexible decisions by the affected agencies on how to achieve compliance in a manner that works best given their unique circumstances and environments. Standards that could potentially maximize net benefits in the abstract would risk actually being less effective, either due to the failure of States and localities to adopt them at all, or due to the damaging consequences that the full costs of compliance could have on funding available for other critical correctional programs.

The RIA examines the cost implications of the two most obvious alternatives to the final standards—the NPREC's recommended standards, which are more stringent than the final rule in many respects, and the standards proposed in the NPRM, which by and large are less stringent—and finds that the standards in the final rule are the most effective and cost-effective among the three alternatives. As shown in Table 16, the final standards are the least expensive of the three alternatives.

TABLE 16—COMPARISON OF PROJECTED NATIONWIDE FULL COMPLIANCE COSTS, FINAL RULE VS. NPRM VS. NPREC RECOMMENDATIONS, IN THOUSANDS OF ANNUALIZED DOLLARS

	NPREC	NPRM	Final rule
Prisons	$1,018,301	$53,318	$64,910
Jails	2,278,566	332,106	163,416
Lockups	2,246,775	72,914	95,504
Community Confinement Facilities	235,884	2,147	12,797
Juvenile Facilities	188,215	50,002	131,912
Total	5,967,741	510,487	468,539

Executive Order 13132—Federalism

In drafting the standards, the Department was mindful of its obligation to meet the objectives of PREA while also minimizing conflicts between State law and Federal interests. In accordance with Executive Order 13132, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Notwithstanding the determination that the formal consultation process described in Executive Order 13132 is not required for this final rule, the Department's PREA Working Group consulted with representatives of State and local prisons and jails, juvenile facilities, community confinement programs, and lockups—among other individuals and groups—during the listening sessions the Working Group conducted in 2010. The Department also solicited and received input from numerous public entities at several levels of government in both the ANPRM and the NPRM stages of this rulemaking.

Insofar as it sets forth national standards that apply to confinement facilities operated by State and local governments, this final rule has the potential to affect the States, the relationship between the national government and the States, and the distribution of power and responsibilities among the various levels of government. However, with respect to the thousands of State and local agencies, and private companies, that own and operate confinement facilities across the country, PREA provides the Department with no direct authority to mandate binding standards for their facilities. Instead, PREA depends upon State and local agencies to make voluntary decisions to adopt and implement them.

For State agencies that receive grant funding from the Department to support their correctional operations, Congress has provided that the Department shall withhold 5 percent of prison-related grant funding to any State that fails to certify that it ''has adopted, and is in full compliance with, the national standards,'' or that fails to alternatively provide ''an assurance that not less than 5 percent'' of the relevant grant funding ''shall be used only for the purpose of enabling the State to adopt, and achieve full compliance with, those national standards, so as to ensure that a certification [of compliance] may be submitted in future years.'' 42 U.S.C. 15607(c)(2). For county, municipal, and privately run agencies that operate confinement facilities, PREA lacks any corresponding sanctions for facilities that do not adopt or comply with the standards.[49]

Despite the absence of statutory authority to promulgate standards that would bind State, local, and private agencies, other consequences may flow from the issuance of national standards, which could provide incentives for voluntary compliance. For example, these standards may influence the standard of care that courts will apply in considering legal and constitutional claims brought against corrections agencies and their employees arising out of allegations of sexual abuse. Moreover, agencies seeking to be accredited by the major accreditation organizations may need to comply with the standards as a condition of accreditation.[50]

Nevertheless, pivotal to the statutory scheme is a voluntary decision by State, county, local, and private correctional agencies to adopt the standards and to comply with them (or alternatively, for States, to commit to expending 5 percent of Department of Justice prison-related grant funds to come into compliance in future years). In deciding whether to adopt these standards, agencies will of necessity conduct their own analyses of whether they can commit to adopting the standards in light of other demands on their correctional budgets.

The Department cannot assume that all agencies will choose to adopt and implement these standards. An agency assessing whether to do so may choose not to based upon an assessment that, with regard to that specific agency, the costs outweigh the benefits. Such a course of action would be regrettable. The Department certainly hopes that it will not be common, and that agencies will instead consider the benefits of prison rape prevention not only to the agencies themselves but also to the inmates in their charge and to the communities to which the agencies are accountable.

Nevertheless, the Department cannot ignore the straitened fiscal realities confronting many correctional agencies. Congress was acutely aware of these circumstances in passing PREA, which authorized the Department to make grants to States ''to assist those States in ensuring that budgetary circumstances (such as reduced State and local spending on prisons) do not compromise efforts to protect inmates (particularly from prison rape).'' 42 U.S.C. 15605(a). Congress did not intend for the Department to impose unrealistic or unachievable standards but rather expected it to partner with those agencies in adopting and implementing policies that will yield successes at combating sexual abuse in confinement facilities, while enabling State and local correctional authorities to continue other correctional programs vital to protecting inmates, staff, and the community, and ensuring that inmates' eventual reintegration into the community is successful.

The statute does not mandate any specific approach in developing the standards, but instead relies upon the Attorney General to exercise his independent judgment. The Attorney General has concluded that the standards in the final rule define measures and programs that, when implemented, will prove effective in accomplishing the goals of the statute while also promoting voluntary compliance decisions by State and local agencies.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies, unless otherwise prohibited by law, to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).

The Department has assessed the probable impact of the final PREA standards and, as is more fully described in the RIA, believes that these standards, if fully adopted and implemented by all State, local, and private operators of confinement facilities, would theoretically result in an aggregate expenditure by such operators of approximately $467 million annually (*i.e.,* the total of $468.5 million annually set forth above, minus $1.75 million annually attributable to Department of Justice entities), when annualized over fifteen years at a 7 percent discount rate.

[49] A small number of States operate unified correctional systems, in which correctional facilities typically administered by counties or cities—such as jails—are operated instead by State agencies. *See* Barbara Krauth, A *Review of the Jail Function Within State Unified Corrections Systems* (Sept. 1997), available at *http://static.nicic.gov/Library/014024.pdf.* In such States, an assessment of whether the State is in full compliance would encompass those facilities as well.

[50] The statute provides that an organization responsible for the accreditation of Federal, State, local, or private prisons, jails, or other penal facilities may not receive any new Federal grants unless it adopts accreditation standards consistent with the standards in the final rule. 42 U.S.C. 15608.

However, the Department concludes that the requirements of the UMRA do not apply to the PREA standards because UMRA excludes from its definition of ''Federal intergovernmental mandate'' those regulations imposing an enforceable duty on other levels of government which are ''a condition of Federal assistance.'' 2 U.S.C. 658(5)(A)(i)(I). PREA provides that any amount that a State would otherwise receive for prison purposes from the Department in a given fiscal year shall be reduced by 5 percent unless the chief executive of the State certifies either that the State is in ''full compliance'' with the standards or that not less than 5 percent of such amount shall be used to enable the State to achieve full compliance with the standards. Accordingly, compliance with these PREA standards is a condition of Federal assistance for State governments.

While the Department does not believe that a formal statement pursuant to the UMRA is required, it has, for the convenience of the public, summarized as follows various matters that are discussed at greater length elsewhere in this rulemaking and that would have been included in a UMRA statement should that have been required:

- These national standards are being issued pursuant to the requirements of the Prison Rape Elimination Act of 2003, 42 U.S.C. 15601 *et seq.;*
- A qualitative and quantitative assessment of the anticipated costs and benefits of these national standards appears above in the section on Executive Order 12866, as elaborated in the RIA;
- The Department does not believe that these national standards will have an effect on national productivity, economic growth, full employment, creation of productive jobs, or international competitiveness of United States goods and services, except to the extent described in the RIA, which postulates *inter alia* that some agencies may add staff in order to comply with some of the standards;
- Notwithstanding how limited the Department's obligations may be under the formal requirements of UMRA, the Department has engaged in a variety of contacts and consultations with State and local governments, including during the listening sessions the Working Group conducted in 2010. In addition, the Department solicited and received input from public entities in both its ANPRM and its NPRM. The Department received numerous comments on its NPRM from State and local entities, the vast majority of which addressed the potential costs associated with certain of the proposed standards. Standards of particular cost concern included the training standards, the auditing standard, and the standards regarding staff supervision and video monitoring. The Department has altered various standards in ways that it believes will appropriately mitigate the cost concerns identified in the comments. State and local entities also expressed concern that the standards were overly burdensome on small correctional systems and facilities, especially in rural areas. The Department's final standards include various revisions to the proposed rule to address this issue.

Small Business Regulatory Enforcement Fairness Act of 1996

This final rule is a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. It may result in an annual effect on the economy of $100,000,000 or more, although it will not result in a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Regulatory Flexibility Act

The Department of Justice drafted this final rule so as to minimize its impact on small entities, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–612, while meeting PREA's intended objectives. The Department has conducted an extensive consideration of the impact of this rule on small governmental entities, and available alternatives, as elaborated in the RIA and in the above discussions of Federalism and UMRA.

The Department provided notice of the proposed standards to potentially affected small governments by publishing the ANPRM and NPRM, by conducting listening sessions, and by other activities; enabled officials of affected small governments to provide meaningful and timely input through the methods listed above; and worked (and will continue to work) to inform, educate, and advise small governments on compliance with the requirements.

As discussed in the RIA summarized above, the Department has identified and considered a reasonable number of regulatory alternatives and from those alternatives has attempted to select the least costly, most cost-effective, and least burdensome alternative that achieves the objectives of PREA.

Paperwork Reduction Act

This final rule contains a new ''collection of information'' covered by the Paperwork Reduction Act of 1995 (PRA), as amended, 44 U.S.C. 3501–3521. Under the PRA, a covered agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number assigned by OMB. 44 U.S.C. 3507(a)(3), 3512.

The information collections in this final rule require covered facilities to retain certain specified information relating to sexual abuse prevention planning, responsive planning, education and training, and investigations, as well as to collect and retain certain specified information relating to allegations of sexual abuse within the facility.

At the time of the proposed rule, the Department submitted an information collection request to OMB for review and approval in accordance with the review procedures of the PRA.

As part of the comment process on the NPRM, the Department received a few comments pertaining to the PRA, mostly raising questions whether certain recordkeeping requirements of the PREA standards duplicated in part the recordkeeping requirements imposed by other Department regulations. These comments and the Department's responses thereto are discussed above in the **SUPPLEMENTARY INFORMATION** portion of this preamble and in the RIA.

Changes to the PREA standards made in response to comments on the NPRM and due to additional analysis resulted in the total PRA burden hours being greater than those estimated in the Department's initial information collection request. None of the comments received on the NPRM pertaining to the PRA aspects of the rule necessitated any changes in the PRA burden hours estimated by the Department. However, the Department has submitted to OMB a revised information collection request with the new burden estimates for review and approval.

List of Subjects in 28 CFR Part 115

Community confinement facilities, Crime, Jails, Juvenile facilities, Lockups, Prisons, Prisoners.

■ Accordingly, part 115 of Title 28 of the Code of Federal Regulations is added as follows:

PART 115—PRISON RAPE ELIMINATION ACT NATIONAL STANDARDS

Sec.

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 15601–15609.

§ 115.5 General definitions.

For purposes of this part, the term—

Agency means the unit of a State, local, corporate, or nonprofit authority, or of the Department of Justice, with direct responsibility for the operation of any facility that confines inmates, detainees, or residents, including the implementation of policy as set by the governing, corporate, or nonprofit authority.

Agency head means the principal official of an agency.

Community confinement facility means a community treatment center, halfway house, restitution center, mental health facility, alcohol or drug rehabilitation center, or other community correctional facility (including residential re-entry centers), other than a juvenile facility, in which individuals reside as part of a term of imprisonment or as a condition of pre-trial release or post-release supervision, while participating in gainful employment, employment search efforts, community service, vocational training, treatment, educational programs, or similar facility-approved programs during nonresidential hours.

Contractor means a person who provides services on a recurring basis pursuant to a contractual agreement with the agency.

Detainee means any person detained in a lockup, regardless of adjudication status.

Direct staff supervision means that security staff are in the same room with, and within reasonable hearing distance of, the resident or inmate.

Employee means a person who works directly for the agency or facility.

Exigent circumstances means any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of a facility.

Facility means a place, institution, building (or part thereof), set of buildings, structure, or area (whether or not enclosing a building or set of buildings) that is used by an agency for the confinement of individuals.

Facility head means the principal official of a facility.

Full compliance means compliance with all material requirements of each standard except for *de minimis* violations, or discrete and temporary violations during otherwise sustained periods of compliance.

Gender nonconforming means a person whose appearance or manner does not conform to traditional societal gender expectations.

Inmate means any person incarcerated or detained in a prison or jail.

Intersex means a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development.

Jail means a confinement facility of a Federal, State, or local law enforcement agency whose primary use is to hold persons pending adjudication of criminal charges, persons committed to confinement after adjudication of criminal charges for sentences of one year or less, or persons adjudicated guilty who are awaiting transfer to a correctional facility.

Juvenile means any person under the age of 18, unless under adult court supervision and confined or detained in a prison or jail.

Juvenile facility means a facility primarily used for the confinement of juveniles pursuant to the juvenile justice system or criminal justice system.

Law enforcement staff means employees responsible for the supervision and control of detainees in lockups.

Lockup means a facility that contains holding cells, cell blocks, or other secure enclosures that are:

(1) Under the control of a law enforcement, court, or custodial officer; and

(2) Primarily used for the temporary confinement of individuals who have recently been arrested, detained, or are being transferred to or from a court, jail, prison, or other agency.

Medical practitioner means a health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice. A ''qualified medical practitioner'' refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims.

Mental health practitioner means a mental health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice. A ''qualified mental health practitioner'' refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims.

Pat-down search means a running of the hands over the clothed body of an inmate, detainee, or resident by an employee to determine whether the individual possesses contraband.

Prison means an institution under Federal or State jurisdiction whose primary use is for the confinement of individuals convicted of a serious crime, usually in excess of one year in length, or a felony.

Resident means any person confined or detained in a juvenile facility or in a community confinement facility.

Secure juvenile facility means a juvenile facility in which the movements and activities of individual residents may be restricted or subject to control through the use of physical barriers or intensive staff supervision. A facility that allows residents access to the community to achieve treatment or correctional objectives, such as through educational or employment programs, typically will not be considered to be a secure juvenile facility.

Security staff means employees primarily responsible for the supervision and control of inmates, detainees, or residents in housing units, recreational areas, dining areas, and other program areas of the facility.

Staff means employees.

Strip search means a search that requires a person to remove or arrange some or all clothing so as to permit a visual inspection of the person's breasts, buttocks, or genitalia.

Substantiated allegation means an allegation that was investigated and determined to have occurred.

Transgender means a person whose gender identity (*i.e.,* internal sense of feeling male or female) is different from the person's assigned sex at birth.

Unfounded allegation means an allegation that was investigated and determined not to have occurred.

Unsubstantiated allegation means an allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.

Volunteer means an individual who donates time and effort on a recurring basis to enhance the activities and programs of the agency.

Youthful inmate means any person under the age of 18 who is under adult court supervision and incarcerated or detained in a prison or jail.

Youthful detainee means any person under the age of 18 who is under adult court supervision and detained in a lockup.

§ 115.6 Definitions related to sexual abuse.

For purposes of this part, the term—

Sexual abuse includes—

(1) Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident; and

(2) Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer.

Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

(1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(2) Contact between the mouth and the penis, vulva, or anus;

(3) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and

(4) Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer includes any of the following acts, with or without consent of the inmate, detainee, or resident:

(1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(2) Contact between the mouth and the penis, vulva, or anus;

(3) Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(4) Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(5) Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(6) Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in paragraphs (1) through (5) of this definition;

(7) Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident, and

(8) Voyeurism by a staff member, contractor, or volunteer.

Sexual harassment includes—

(1) Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate, detainee, or resident directed toward another; and

(2) Repeated verbal comments or gestures of a sexual nature to an inmate, detainee, or resident by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

Voyeurism by a staff member, contractor, or volunteer means an invasion of privacy of an inmate, detainee, or resident by staff for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.

Subpart A—Standards for Adult Prisons and Jails

Prevention Planning

§ 115.11 Zero tolerance of sexual abuse and sexual harassment; PREA coordinator.

(a) An agency shall have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the agency's approach to preventing, detecting, and responding to such conduct.

(b) An agency shall employ or designate an upper-level, agency-wide PREA coordinator with sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its facilities.

(c) Where an agency operates more than one facility, each facility shall designate a PREA compliance manager with sufficient time and authority to coordinate the facility's efforts to comply with the PREA standards.

§ 115.12 Contracting with other entities for the confinement of inmates.

(a) A public agency that contracts for the confinement of its inmates with private agencies or other entities, including other government agencies, shall include in any new contract or contract renewal the entity's obligation to adopt and comply with the PREA standards.

(b) Any new contract or contract renewal shall provide for agency contract monitoring to ensure that the contractor is complying with the PREA standards.

§ 115.13 Supervision and monitoring.

(a) The agency shall ensure that each facility it operates shall develop, document, and make its best efforts to comply on a regular basis with a staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect inmates against sexual abuse. In calculating adequate staffing levels and determining the need for video monitoring, facilities shall take into consideration:

(1) Generally accepted detention and correctional practices;

(2) Any judicial findings of inadequacy;

(3) Any findings of inadequacy from Federal investigative agencies;

(4) Any findings of inadequacy from internal or external oversight bodies;

(5) All components of the facility's physical plant (including ''blind-spots'' or areas where staff or inmates may be isolated);

(6) The composition of the inmate population;

(7) The number and placement of supervisory staff;

(8) Institution programs occurring on a particular shift;

(9) Any applicable State or local laws, regulations, or standards;

(10) The prevalence of substantiated and unsubstantiated incidents of sexual abuse; and

(11) Any other relevant factors.

(b) In circumstances where the staffing plan is not complied with, the facility shall document and justify all deviations from the plan.

(c) Whenever necessary, but no less frequently than once each year, for each facility the agency operates, in consultation with the PREA coordinator required by § 115.11, the agency shall assess, determine, and document whether adjustments are needed to:

(1) The staffing plan established pursuant to paragraph (a) of this section;

(2) The facility's deployment of video monitoring systems and other monitoring technologies; and

(3) The resources the facility has available to commit to ensure adherence to the staffing plan.

(d) Each agency operating a facility shall implement a policy and practice of having intermediate-level or higher-level supervisors conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment. Such policy and practice shall be implemented for night shifts as well as day shifts. Each agency shall have a policy to prohibit staff from alerting other staff members that these supervisory rounds are occurring, unless such announcement is related to the legitimate operational functions of the facility.

§ 115.14 Youthful inmates.

(a) A youthful inmate shall not be placed in a housing unit in which the youthful inmate will have sight, sound, or physical contact with any adult inmate through use of a shared dayroom or other common space, shower area, or sleeping quarters.

(b) In areas outside of housing units, agencies shall either:

(1) Maintain sight and sound separation between youthful inmates and adult inmates, or

(2) Provide direct staff supervision when youthful inmates and adult inmates have sight, sound, or physical contact.

(c) Agencies shall make best efforts to avoid placing youthful inmates in isolation to comply with this provision. Absent exigent circumstances, agencies shall not deny youthful inmates daily large-muscle exercise and any legally required special education services to comply with this provision. Youthful inmates shall also have access to other programs and work opportunities to the extent possible.

§ 115.15 Limits to cross-gender viewing and searches.

(a) The facility shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners.

(b) As of August 20, 2015, or August 21, 2017 for a facility whose rated capacity does not exceed 50 inmates, the facility shall not permit cross-gender pat-down searches of female inmates, absent exigent circumstances. Facilities shall not restrict female inmates' access to regularly available programming or other out-of-cell opportunities in order to comply with this provision.

(c) The facility shall document all cross-gender strip searches and cross-gender visual body cavity searches, and shall document all cross-gender pat-down searches of female inmates.

(d) The facility shall implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Such policies and procedures shall require staff of the opposite gender to announce

their presence when entering an inmate housing unit.

(e) The facility shall not search or physically examine a transgender or intersex inmate for the sole purpose of determining the inmate's genital status. If the inmate's genital status is unknown, it may be determined during conversations with the inmate, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.

(f) The agency shall train security staff in how to conduct cross-gender pat-down searches, and searches of transgender and intersex inmates, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

§ 115.16 Inmates with disabilities and inmates who are limited English proficient.

(a) The agency shall take appropriate steps to ensure that inmates with disabilities (including, for example, inmates who are deaf or hard of hearing, those who are blind or have low vision, or those who have intellectual, psychiatric, or speech disabilities), have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment. Such steps shall include, when necessary to ensure effective communication with inmates who are deaf or hard of hearing, providing access to interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. In addition, the agency shall ensure that written materials are provided in formats or through methods that ensure effective communication with inmates with disabilities, including inmates who have intellectual disabilities, limited reading skills, or who are blind or have low vision. An agency is not required to take actions that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity, or in undue financial and administrative burdens, as those terms are used in regulations promulgated under title II of the Americans With Disabilities Act, 28 CFR 35.164.

(b) The agency shall take reasonable steps to ensure meaningful access to all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment to inmates who are limited English proficient, including steps to provide interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

(c) The agency shall not rely on inmate interpreters, inmate readers, or other types of inmate assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the inmate's safety, the performance of first-response duties under § 115.64, or the investigation of the inmate's allegations.

§ 115.17 Hiring and promotion decisions.

(a) The agency shall not hire or promote anyone who may have contact with inmates, and shall not enlist the services of any contractor who may have contact with inmates, who—

(1) Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997);

(2) Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or

(3) Has been civilly or administratively adjudicated to have engaged in the activity described in paragraph (a)(2) of this section.

(b) The agency shall consider any incidents of sexual harassment in determining whether to hire or promote anyone, or to enlist the services of any contractor, who may have contact with inmates.

(c) Before hiring new employees who may have contact with inmates, the agency shall:

(1) Perform a criminal background records check; and

(2) Consistent with Federal, State, and local law, make its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse.

(d) The agency shall also perform a criminal background records check before enlisting the services of any contractor who may have contact with inmates.

(e) The agency shall either conduct criminal background records checks at least every five years of current employees and contractors who may have contact with inmates or have in place a system for otherwise capturing such information for current employees.

(f) The agency shall ask all applicants and employees who may have contact with inmates directly about previous misconduct described in paragraph (a) of this section in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of reviews of current employees. The agency shall also impose upon employees a continuing affirmative duty to disclose any such misconduct.

(g) Material omissions regarding such misconduct, or the provision of materially false information, shall be grounds for termination.

(h) Unless prohibited by law, the agency shall provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.

§ 115.18 Upgrades to facilities and technologies.

(a) When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the agency shall consider the effect of the design, acquisition, expansion, or modification upon the agency's ability to protect inmates from sexual abuse.

(b) When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, the agency shall consider how such technology may enhance the agency's ability to protect inmates from sexual abuse.

Responsive Planning

§ 115.21 Evidence protocol and forensic medical examinations.

(a) To the extent the agency is responsible for investigating allegations of sexual abuse, the agency shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.

(b) The protocol shall be developmentally appropriate for youth where applicable, and, as appropriate, shall be adapted from or otherwise based on the most recent edition of the U.S. Department of Justice's Office on Violence Against Women publication, ''A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents,'' or similarly comprehensive and authoritative protocols developed after 2011.

(c) The agency shall offer all victims of sexual abuse access to forensic medical examinations, whether on-site or at an outside facility, without financial cost, where evidentiarily or medically appropriate. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse

Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The agency shall document its efforts to provide SAFEs or SANEs.

(d) The agency shall attempt to make available to the victim a victim advocate from a rape crisis center. If a rape crisis center is not available to provide victim advocate services, the agency shall make available to provide these services a qualified staff member from a community-based organization, or a qualified agency staff member. Agencies shall document efforts to secure services from rape crisis centers. For the purpose of this standard, a rape crisis center refers to an entity that provides intervention and related assistance, such as the services specified in 42 U.S.C. 14043g(b)(2)(C), to victims of sexual assault of all ages. The agency may utilize a rape crisis center that is part of a governmental unit as long as the center is not part of the criminal justice system (such as a law enforcement agency) and offers a comparable level of confidentiality as a nongovernmental entity that provides similar victim services.

(e) As requested by the victim, the victim advocate, qualified agency staff member, or qualified community-based organization staff member shall accompany and support the victim through the forensic medical examination process and investigatory interviews and shall provide emotional support, crisis intervention, information, and referrals.

(f) To the extent the agency itself is not responsible for investigating allegations of sexual abuse, the agency shall request that the investigating agency follow the requirements of paragraphs (a) through (e) of this section.

(g) The requirements of paragraphs (a) through (f) of this section shall also apply to:

(1) Any State entity outside of the agency that is responsible for investigating allegations of sexual abuse in prisons or jails; and

(2) Any Department of Justice component that is responsible for investigating allegations of sexual abuse in prisons or jails.

(h) For the purposes of this section, a qualified agency staff member or a qualified community-based staff member shall be an individual who has been screened for appropriateness to serve in this role and has received education concerning sexual assault and forensic examination issues in general.

§ 115.22 Policies to ensure referrals of allegations for investigations.

(a) The agency shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment.

(b) The agency shall have in place a policy to ensure that allegations of sexual abuse or sexual harassment are referred for investigation to an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior. The agency shall publish such policy on its Web site or, if it does not have one, make the policy available through other means. The agency shall document all such referrals.

(c) If a separate entity is responsible for conducting criminal investigations, such publication shall describe the responsibilities of both the agency and the investigating entity.

(d) Any State entity responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in prisons or jails shall have in place a policy governing the conduct of such investigations.

(e) Any Department of Justice component responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in prisons or jails shall have in place a policy governing the conduct of such investigations.

Training and Education

§ 115.31 Employee training.

(a) The agency shall train all employees who may have contact with inmates on:

(1) Its zero-tolerance policy for sexual abuse and sexual harassment;

(2) How to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;

(3) Inmates' right to be free from sexual abuse and sexual harassment;

(4) The right of inmates and employees to be free from retaliation for reporting sexual abuse and sexual harassment;

(5) The dynamics of sexual abuse and sexual harassment in confinement;

(6) The common reactions of sexual abuse and sexual harassment victims;

(7) How to detect and respond to signs of threatened and actual sexual abuse;

(8) How to avoid inappropriate relationships with inmates;

(9) How to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates; and

(10) How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.

(b) Such training shall be tailored to the gender of the inmates at the employee's facility. The employee shall receive additional training if the employee is reassigned from a facility that houses only male inmates to a facility that houses only female inmates, or vice versa.

(c) All current employees who have not received such training shall be trained within one year of the effective date of the PREA standards, and the agency shall provide each employee with refresher training every two years to ensure that all employees know the agency's current sexual abuse and sexual harassment policies and procedures. In years in which an employee does not receive refresher training, the agency shall provide refresher information on current sexual abuse and sexual harassment policies.

(d) The agency shall document, through employee signature or electronic verification, that employees understand the training they have received.

§ 115.32 Volunteer and contractor training.

(a) The agency shall ensure that all volunteers and contractors who have contact with inmates have been trained on their responsibilities under the agency's sexual abuse and sexual harassment prevention, detection, and response policies and procedures.

(b) The level and type of training provided to volunteers and contractors shall be based on the services they provide and level of contact they have with inmates, but all volunteers and contractors who have contact with inmates shall be notified of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report such incidents.

(c) The agency shall maintain documentation confirming that volunteers and contractors understand the training they have received.

§ 115.33 Inmate education.

(a) During the intake process, inmates shall receive information explaining the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment.

(b) Within 30 days of intake, the agency shall provide comprehensive education to inmates either in person or through video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding agency policies and

procedures for responding to such incidents.

(c) Current inmates who have not received such education shall be educated within one year of the effective date of the PREA standards, and shall receive education upon transfer to a different facility to the extent that the policies and procedures of the inmate's new facility differ from those of the previous facility.

(d) The agency shall provide inmate education in formats accessible to all inmates, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as to inmates who have limited reading skills.

(e) The agency shall maintain documentation of inmate participation in these education sessions.

(f) In addition to providing such education, the agency shall ensure that key information is continuously and readily available or visible to inmates through posters, inmate handbooks, or other written formats.

§ 115.34 Specialized training: Investigations.

(a) In addition to the general training provided to all employees pursuant to § 115.31, the agency shall ensure that, to the extent the agency itself conducts sexual abuse investigations, its investigators have received training in conducting such investigations in confinement settings.

(b) Specialized training shall include techniques for interviewing sexual abuse victims, proper use of *Miranda* and *Garrity* warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral.

(c) The agency shall maintain documentation that agency investigators have completed the required specialized training in conducting sexual abuse investigations.

(d) Any State entity or Department of Justice component that investigates sexual abuse in confinement settings shall provide such training to its agents and investigators who conduct such investigations.

§ 115.35 Specialized training: Medical and mental health care.

(a) The agency shall ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in:

(1) How to detect and assess signs of sexual abuse and sexual harassment;

(2) How to preserve physical evidence of sexual abuse;

(3) How to respond effectively and professionally to victims of sexual abuse and sexual harassment; and

(4) How and to whom to report allegations or suspicions of sexual abuse and sexual harassment.

(b) If medical staff employed by the agency conduct forensic examinations, such medical staff shall receive the appropriate training to conduct such examinations.

(c) The agency shall maintain documentation that medical and mental health practitioners have received the training referenced in this standard either from the agency or elsewhere.

(d) Medical and mental health care practitioners shall also receive the training mandated for employees under § 115.31 or for contractors and volunteers under § 115.32, depending upon the practitioner's status at the agency.

Screening for Risk of Sexual Victimization and Abusiveness

§ 115.41 Screening for risk of victimization and abusiveness.

(a) All inmates shall be assessed during an intake screening and upon transfer to another facility for their risk of being sexually abused by other inmates or sexually abusive toward other inmates.

(b) Intake screening shall ordinarily take place within 72 hours of arrival at the facility.

(c) Such assessments shall be conducted using an objective screening instrument.

(d) The intake screening shall consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization:

(1) Whether the inmate has a mental, physical, or developmental disability;

(2) The age of the inmate;

(3) The physical build of the inmate;

(4) Whether the inmate has previously been incarcerated;

(5) Whether the inmate's criminal history is exclusively nonviolent;

(6) Whether the inmate has prior convictions for sex offenses against an adult or child;

(7) Whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;

(8) Whether the inmate has previously experienced sexual victimization;

(9) The inmate's own perception of vulnerability; and

(10) Whether the inmate is detained solely for civil immigration purposes.

(e) The initial screening shall consider prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse, as known to the agency, in assessing inmates for risk of being sexually abusive.

(f) Within a set time period, not to exceed 30 days from the inmate's arrival at the facility, the facility will reassess the inmate's risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the intake screening.

(g) An inmate's risk level shall be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the inmate's risk of sexual victimization or abusiveness.

(h) Inmates may not be disciplined for refusing to answer, or for not disclosing complete information in response to, questions asked pursuant to paragraphs (d)(1), (d)(7), (d)(8), or (d)(9) of this section.

(i) The agency shall implement appropriate controls on the dissemination within the facility of responses to questions asked pursuant to this standard in order to ensure that sensitive information is not exploited to the inmate's detriment by staff or other inmates.

§ 115.42 Use of screening information.

(a) The agency shall use information from the risk screening required by § 115.41 to inform housing, bed, work, education, and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive.

(b) The agency shall make individualized determinations about how to ensure the safety of each inmate.

(c) In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems.

(d) Placement and programming assignments for each transgender or intersex inmate shall be reassessed at least twice each year to review any threats to safety experienced by the inmate.

(e) A transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration.

(f) Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.

(g) The agency shall not place lesbian, gay, bisexual, transgender, or intersex inmates in dedicated facilities, units, or wings solely on the basis of such identification or status, unless such placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates.

§ 115.43 Protective custody.

(a) Inmates at high risk for sexual victimization shall not be placed in involuntary segregated housing unless an assessment of all available alternatives has been made, and a determination has been made that there is no available alternative means of separation from likely abusers. If a facility cannot conduct such an assessment immediately, the facility may hold the inmate in involuntary segregated housing for less than 24 hours while completing the assessment.

(b) Inmates placed in segregated housing for this purpose shall have access to programs, privileges, education, and work opportunities to the extent possible. If the facility restricts access to programs, privileges, education, or work opportunities, the facility shall document:

(1) The opportunities that have been limited;

(2) The duration of the limitation; and

(3) The reasons for such limitations.

(c) The facility shall assign such inmates to involuntary segregated housing only until an alternative means of separation from likely abusers can be arranged, and such an assignment shall not ordinarily exceed a period of 30 days.

(d) If an involuntary segregated housing assignment is made pursuant to paragraph (a) of this section, the facility shall clearly document:

(1) The basis for the facility's concern for the inmate's safety; and

(2) The reason why no alternative means of separation can be arranged.

(e) Every 30 days, the facility shall afford each such inmate a review to determine whether there is a continuing need for separation from the general population.

Reporting

§ 115.51 Inmate reporting.

(a) The agency shall provide multiple internal ways for inmates to privately report sexual abuse and sexual harassment, retaliation by other inmates or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents.

(b) The agency shall also provide at least one way for inmates to report abuse or harassment to a public or private entity or office that is not part of the agency, and that is able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to agency officials, allowing the inmate to remain anonymous upon request. Inmates detained solely for civil immigration purposes shall be provided information on how to contact relevant consular officials and relevant officials at the Department of Homeland Security.

(c) Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports.

(d) The agency shall provide a method for staff to privately report sexual abuse and sexual harassment of inmates.

§ 115.52 Exhaustion of administrative remedies.

(a) An agency shall be exempt from this standard if it does not have administrative procedures to address inmate grievances regarding sexual abuse.

(b)(1) The agency shall not impose a time limit on when an inmate may submit a grievance regarding an allegation of sexual abuse.

(2) The agency may apply otherwise-applicable time limits to any portion of a grievance that does not allege an incident of sexual abuse.

(3) The agency shall not require an inmate to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse.

(4) Nothing in this section shall restrict the agency's ability to defend against an inmate lawsuit on the ground that the applicable statute of limitations has expired.

(c) The agency shall ensure that—

(1) An inmate who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint, and

(2) Such grievance is not referred to a staff member who is the subject of the complaint.

(d)(1) The agency shall issue a final agency decision on the merits of any portion of a grievance alleging sexual abuse within 90 days of the initial filing of the grievance.

(2) Computation of the 90-day time period shall not include time consumed by inmates in preparing any administrative appeal.

(3) The agency may claim an extension of time to respond, of up to 70 days, if the normal time period for response is insufficient to make an appropriate decision. The agency shall notify the inmate in writing of any such extension and provide a date by which a decision will be made.

(4) At any level of the administrative process, including the final level, if the inmate does not receive a response within the time allotted for reply, including any properly noticed extension, the inmate may consider the absence of a response to be a denial at that level.

(e)(1) Third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates, shall be permitted to assist inmates in filing requests for administrative remedies relating to allegations of sexual abuse, and shall also be permitted to file such requests on behalf of inmates.

(2) If a third party files such a request on behalf of an inmate, the facility may require as a condition of processing the request that the alleged victim agree to have the request filed on his or her behalf, and may also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process.

(3) If the inmate declines to have the request processed on his or her behalf, the agency shall document the inmate's decision.

(f)(1) The agency shall establish procedures for the filing of an emergency grievance alleging that an inmate is subject to a substantial risk of imminent sexual abuse.

(2) After receiving an emergency grievance alleging an inmate is subject to a substantial risk of imminent sexual abuse, the agency shall immediately forward the grievance (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to a level of review at which immediate corrective action may be taken, shall provide an initial response within 48 hours, and shall issue a final agency decision within 5 calendar days. The initial response and final agency decision shall document the agency's determination whether the inmate is in substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance.

(g) The agency may discipline an inmate for filing a grievance related to alleged sexual abuse only where the agency demonstrates that the inmate filed the grievance in bad faith.

§ 115.53 Inmate access to outside confidential support services.

(a) The facility shall provide inmates with access to outside victim advocates for emotional support services related to sexual abuse by giving inmates mailing

addresses and telephone numbers, including toll-free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations, and, for persons detained solely for civil immigration purposes, immigrant services agencies. The facility shall enable reasonable communication between inmates and these organizations and agencies, in as confidential a manner as possible.

(b) The facility shall inform inmates, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.

(c) The agency shall maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that are able to provide inmates with confidential emotional support services related to sexual abuse. The agency shall maintain copies of agreements or documentation showing attempts to enter into such agreements.

§ 115.54 Third-party reporting.

The agency shall establish a method to receive third-party reports of sexual abuse and sexual harassment and shall distribute publicly information on how to report sexual abuse and sexual harassment on behalf of an inmate.

Official Response Following an Inmate Report

§ 115.61 Staff and agency reporting duties.

(a) The agency shall require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the agency; retaliation against inmates or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.

(b) Apart from reporting to designated supervisors or officials, staff shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary, as specified in agency policy, to make treatment, investigation, and other security and management decisions.

(c) Unless otherwise precluded by Federal, State, or local law, medical and mental health practitioners shall be required to report sexual abuse pursuant to paragraph (a) of this section and to inform inmates of the practitioner's duty to report, and the limitations of confidentiality, at the initiation of services.

(d) If the alleged victim is under the age of 18 or considered a vulnerable adult under a State or local vulnerable persons statute, the agency shall report the allegation to the designated State or local services agency under applicable mandatory reporting laws.

(e) The facility shall report all allegations of sexual abuse and sexual harassment, including third-party and anonymous reports, to the facility's designated investigators.

§ 115.62 Agency protection duties.

When an agency learns that an inmate is subject to a substantial risk of imminent sexual abuse, it shall take immediate action to protect the inmate.

§ 115.63 Reporting to other confinement facilities.

(a) Upon receiving an allegation that an inmate was sexually abused while confined at another facility, the head of the facility that received the allegation shall notify the head of the facility or appropriate office of the agency where the alleged abuse occurred.

(b) Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation.

(c) The agency shall document that it has provided such notification.

(d) The facility head or agency office that receives such notification shall ensure that the allegation is investigated in accordance with these standards.

§ 115.64 Staff first responder duties.

(a) Upon learning of an allegation that an inmate was sexually abused, the first security staff member to respond to the report shall be required to:

(1) Separate the alleged victim and abuser;

(2) Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence;

(3) If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and

(4) If the abuse occurred within a time period that still allows for the collection of physical evidence, ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.

(b) If the first staff responder is not a security staff member, the responder shall be required to request that the alleged victim not take any actions that could destroy physical evidence, and then notify security staff.

§ 115.65 Coordinated response.

The facility shall develop a written institutional plan to coordinate actions taken in response to an incident of sexual abuse, among staff first responders, medical and mental health practitioners, investigators, and facility leadership.

§ 115.66 Preservation of ability to protect inmates from contact with abusers.

(a) Neither the agency nor any other governmental entity responsible for collective bargaining on the agency's behalf shall enter into or renew any collective bargaining agreement or other agreement that limits the agency's ability to remove alleged staff sexual abusers from contact with any inmates pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted.

(b) Nothing in this standard shall restrict the entering into or renewal of agreements that govern:

(1) The conduct of the disciplinary process, as long as such agreements are not inconsistent with the provisions of §§ 115.72 and 115.76; or

(2) Whether a no-contact assignment that is imposed pending the outcome of an investigation shall be expunged from or retained in the staff member's personnel file following a determination that the allegation of sexual abuse is not substantiated.

§ 115.67 Agency protection against retaliation.

(a) The agency shall establish a policy to protect all inmates and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other inmates or staff, and shall designate which staff members or departments are charged with monitoring retaliation.

(b) The agency shall employ multiple protection measures, such as housing changes or transfers for inmate victims or abusers, removal of alleged staff or inmate abusers from contact with victims, and emotional support services for inmates or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.

(c) For at least 90 days following a report of sexual abuse, the agency shall monitor the conduct and treatment of inmates or staff who reported the sexual abuse and of inmates who were reported to have suffered sexual abuse to see if

there are changes that may suggest possible retaliation by inmates or staff, and shall act promptly to remedy any such retaliation. Items the agency should monitor include any inmate disciplinary reports, housing, or program changes, or negative performance reviews or reassignments of staff. The agency shall continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need.

(d) In the case of inmates, such monitoring shall also include periodic status checks.

(e) If any other individual who cooperates with an investigation expresses a fear of retaliation, the agency shall take appropriate measures to protect that individual against retaliation.

(f) An agency's obligation to monitor shall terminate if the agency determines that the allegation is unfounded.

§ 115.68 Post-allegation protective custody.

Any use of segregated housing to protect an inmate who is alleged to have suffered sexual abuse shall be subject to the requirements of § 115.43.

Investigations

§ 115.71 Criminal and administrative agency investigations.

(a) When the agency conducts its own investigations into allegations of sexual abuse and sexual harassment, it shall do so promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports.

(b) Where sexual abuse is alleged, the agency shall use investigators who have received special training in sexual abuse investigations pursuant to § 115.34.

(c) Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.

(d) When the quality of evidence appears to support criminal prosecution, the agency shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.

(e) The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as inmate or staff. No agency shall require an inmate who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.

(f) Administrative investigations:

(1) Shall include an effort to determine whether staff actions or failures to act contributed to the abuse; and

(2) Shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.

(g) Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.

(h) Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.

(i) The agency shall retain all written reports referenced in paragraphs (f) and (g) of this section for as long as the alleged abuser is incarcerated or employed by the agency, plus five years.

(j) The departure of the alleged abuser or victim from the employment or control of the facility or agency shall not provide a basis for terminating an investigation.

(k) Any State entity or Department of Justice component that conducts such investigations shall do so pursuant to the above requirements.

(l) When outside agencies investigate sexual abuse, the facility shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.

§ 115.72 Evidentiary standard for administrative investigations.

The agency shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.

§ 115.73 Reporting to inmates.

(a) Following an investigation into an inmate's allegation that he or she suffered sexual abuse in an agency facility, the agency shall inform the inmate as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.

(b) If the agency did not conduct the investigation, it shall request the relevant information from the investigative agency in order to inform the inmate.

(c) Following an inmate's allegation that a staff member has committed sexual abuse against the inmate, the agency shall subsequently inform the inmate (unless the agency has determined that the allegation is unfounded) whenever:

(1) The staff member is no longer posted within the inmate's unit;

(2) The staff member is no longer employed at the facility;

(3) The agency learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or

(4) The agency learns that the staff member has been convicted on a charge related to sexual abuse within the facility.

(d) Following an inmate's allegation that he or she has been sexually abused by another inmate, the agency shall subsequently inform the alleged victim whenever:

(1) The agency learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or

(2) The agency learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.

(e) All such notifications or attempted notifications shall be documented.

(f) An agency's obligation to report under this standard shall terminate if the inmate is released from the agency's custody.

Discipline

§ 115.76 Disciplinary sanctions for staff.

(a) Staff shall be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies.

(b) Termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual abuse.

(c) Disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.

(d) All terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.

§ 115.77 Corrective action for contractors and volunteers.

(a) Any contractor or volunteer who engages in sexual abuse shall be

prohibited from contact with inmates and shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies.

(b) The facility shall take appropriate remedial measures, and shall consider whether to prohibit further contact with inmates, in the case of any other violation of agency sexual abuse or sexual harassment policies by a contractor or volunteer.

§ 115.78 Disciplinary sanctions for inmates.

(a) Inmates shall be subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the inmate engaged in inmate-on-inmate sexual abuse or following a criminal finding of guilt for inmate-on-inmate sexual abuse.

(b) Sanctions shall be commensurate with the nature and circumstances of the abuse committed, the inmate's disciplinary history, and the sanctions imposed for comparable offenses by other inmates with similar histories.

(c) The disciplinary process shall consider whether an inmate's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed.

(d) If the facility offers therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse, the facility shall consider whether to require the offending inmate to participate in such interventions as a condition of access to programming or other benefits.

(e) The agency may discipline an inmate for sexual contact with staff only upon a finding that the staff member did not consent to such contact.

(f) For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.

(g) An agency may, in its discretion, prohibit all sexual activity between inmates and may discipline inmates for such activity. An agency may not, however, deem such activity to constitute sexual abuse if it determines that the activity is not coerced.

Medical and Mental Care

§ 115.81 Medical and mental health screenings; history of sexual abuse.

(a) If the screening pursuant to § 115.41 indicates that a prison inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening.

(b) If the screening pursuant to § 115.41 indicates that a prison inmate has previously perpetrated sexual abuse, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a mental health practitioner within 14 days of the intake screening.

(c) If the screening pursuant to § 115.41 indicates that a jail inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening.

(d) Any information related to sexual victimization or abusiveness that occurred in an institutional setting shall be strictly limited to medical and mental health practitioners and other staff, as necessary, to inform treatment plans and security and management decisions, including housing, bed, work, education, and program assignments, or as otherwise required by Federal, State, or local law.

(e) Medical and mental health practitioners shall obtain informed consent from inmates before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the inmate is under the age of 18.

§ 115.82 Access to emergency medical and mental health services.

(a) Inmate victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment.

(b) If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, security staff first responders shall take preliminary steps to protect the victim pursuant to § 115.62 and shall immediately notify the appropriate medical and mental health practitioners.

(c) Inmate victims of sexual abuse while incarcerated shall be offered timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where medically appropriate.

(d) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

§ 115.83 Ongoing medical and mental health care for sexual abuse victims and abusers.

(a) The facility shall offer medical and mental health evaluation and, as appropriate, treatment to all inmates who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility.

(b) The evaluation and treatment of such victims shall include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody.

(c) The facility shall provide such victims with medical and mental health services consistent with the community level of care.

(d) Inmate victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests.

(e) If pregnancy results from the conduct described in paragraph (d) of this section, such victims shall receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services.

(f) Inmate victims of sexual abuse while incarcerated shall be offered tests for sexually transmitted infections as medically appropriate.

(g) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

(h) All prisons shall attempt to conduct a mental health evaluation of all known inmate-on-inmate abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners.

Data Collection and Review

§ 115.86 Sexual abuse incident reviews.

(a) The facility shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded.

(b) Such review shall ordinarily occur within 30 days of the conclusion of the investigation.

(c) The review team shall include upper-level management officials, with

input from line supervisors, investigators, and medical or mental health practitioners.

(d) The review team shall:

(1) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;

(2) Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility;

(3) Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;

(4) Assess the adequacy of staffing levels in that area during different shifts;

(5) Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and

(6) Prepare a report of its findings, including but not necessarily limited to determinations made pursuant to paragraphs (d)(1) through (d)(5) of this section, and any recommendations for improvement and submit such report to the facility head and PREA compliance manager.

(e) The facility shall implement the recommendations for improvement, or shall document its reasons for not doing so.

§ 115.87 Data collection.

(a) The agency shall collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions.

(b) The agency shall aggregate the incident-based sexual abuse data at least annually.

(c) The incident-based data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice.

(d) The agency shall maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews.

(e) The agency also shall obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its inmates.

(f) Upon request, the agency shall provide all such data from the previous calendar year to the Department of Justice no later than June 30.

§ 115.88 Data review for corrective action.

(a) The agency shall review data collected and aggregated pursuant to § 115.87 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by:

(1) Identifying problem areas;

(2) Taking corrective action on an ongoing basis; and

(3) Preparing an annual report of its findings and corrective actions for each facility, as well as the agency as a whole.

(b) Such report shall include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of the agency's progress in addressing sexual abuse.

(c) The agency's report shall be approved by the agency head and made readily available to the public through its Web site or, if it does not have one, through other means.

(d) The agency may redact specific material from the reports when publication would present a clear and specific threat to the safety and security of a facility, but must indicate the nature of the material redacted.

§ 115.89 Data storage, publication, and destruction.

(a) The agency shall ensure that data collected pursuant to § 115.87 are securely retained.

(b) The agency shall make all aggregated sexual abuse data, from facilities under its direct control and private facilities with which it contracts, readily available to the public at least annually through its Web site or, if it does not have one, through other means.

(c) Before making aggregated sexual abuse data publicly available, the agency shall remove all personal identifiers.

(d) The agency shall maintain sexual abuse data collected pursuant to § 115.87 for at least 10 years after the date of the initial collection unless Federal, State, or local law requires otherwise.

Audits

§ 115.93 Audits of standards.

The agency shall conduct audits pursuant to §§ 115.401 through 115.405.

Subpart B—Standards for Lockups

Prevention Planning

§ 115.111 Zero tolerance of sexual abuse and sexual harassment; PREA coordinator.

(a) An agency shall have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the agency's approach to preventing, detecting, and responding to such conduct.

(b) An agency shall employ or designate an upper-level, agency-wide PREA coordinator with sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its lockups.

§ 115.112 Contracting with other entities for the confinement of detainees.

(a) A law enforcement agency that contracts for the confinement of its lockup detainees in lockups operated by private agencies or other entities, including other government agencies, shall include in any new contract or contract renewal the entity's obligation to adopt and comply with the PREA standards.

(b) Any new contract or contract renewal shall provide for agency contract monitoring to ensure that the contractor is complying with the PREA standards.

§ 115.113 Supervision and monitoring.

(a) For each lockup, the agency shall develop and document a staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect detainees against sexual abuse. In calculating adequate staffing levels and determining the need for video monitoring, agencies shall take into consideration;

(1) The physical layout of each lockup;

(2) The composition of the detainee population;

(3) The prevalence of substantiated and unsubstantiated incidents of sexual abuse; and

(4) Any other relevant factors.

(b) In circumstances where the staffing plan is not complied with, the lockup shall document and justify all deviations from the plan.

(c) Whenever necessary, but no less frequently than once each year, the lockup shall assess, determine, and document whether adjustments are needed to:

(1) The staffing plan established pursuant to paragraph (a) of this section;

(2) Prevailing staffing patterns;

(3) The lockup's deployment of video monitoring systems and other monitoring technologies; and

(4) The resources the lockup has available to commit to ensure adequate staffing levels.

(d) If vulnerable detainees are identified pursuant to the screening required by § 115.141, security staff shall provide such detainees with

heightened protection, to include continuous direct sight and sound supervision, single-cell housing, or placement in a cell actively monitored on video by a staff member sufficiently proximate to intervene, unless no such option is determined to be feasible.

§ 115.114 Juveniles and youthful detainees.

Juveniles and youthful detainees shall be held separately from adult detainees.

§ 115.115 Limits to cross-gender viewing and searches.

(a) The lockup shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners.

(b) The lockup shall document all cross-gender strip searches and cross-gender visual body cavity searches.

(c) The lockup shall implement policies and procedures that enable detainees to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering an area where detainees are likely to be showering, performing bodily functions, or changing clothing.

(d) The lockup shall not search or physically examine a transgender or intersex detainee for the sole purpose of determining the detainee's genital status. If the detainee's genital status is unknown, it may be determined during conversations with the detainee, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.

(e) The agency shall train law enforcement staff in how to conduct cross-gender pat-down searches, and searches of transgender and intersex detainees, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

§ 115.116 Detainees with disabilities and detainees who are limited English proficient.

(a) The agency shall take appropriate steps to ensure that detainees with disabilities (including, for example, detainees who are deaf or hard of hearing, those who are blind or have low vision, or those who have intellectual, psychiatric, or speech disabilities), have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment. Such steps shall include, when necessary to ensure effective communication with detainees who are deaf or hard of hearing, providing access to interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. In addition, the agency shall ensure that written materials are provided in formats or through methods that ensure effective communication with detainees with disabilities, including detainees who have intellectual disabilities, limited reading skills, or who are blind or have low vision. An agency is not required to take actions that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity, or in undue financial and administrative burdens, as those terms are used in regulations promulgated under title II of the Americans With Disabilities Act, 28 CFR 35.164.

(b) The agency shall take reasonable steps to ensure meaningful access to all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment to detainees who are limited English proficient, including steps to provide interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

(c) The agency shall not rely on detainee interpreters, detainee readers, or other types of detainee assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the detainee's safety, the performance of first-response duties under § 115.164, or the investigation of the detainee's allegations.

§ 115.117 Hiring and promotion decisions.

(a) The agency shall not hire or promote anyone who may have contact with detainees, and shall not enlist the services of any contractor who may have contact with detainees, who—

(1) Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997);

(2) Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or

(3) Has been civilly or administratively adjudicated to have engaged in the activity described in paragraph (a)(2) of this section.

(b) The agency shall consider any incidents of sexual harassment in determining whether to hire or promote anyone, or to enlist the services of any contractor, who may have contact with detainees.

(c) Before hiring new employees who may have contact with detainees, the agency shall:

(1) Perform a criminal background records check; and

(2) Consistent with Federal, State, and local law, make its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse.

(d) The agency shall also perform a criminal background records check before enlisting the services of any contractor who may have contact with detainees.

(e) The agency shall either conduct criminal background records checks at least every five years of current employees and contractors who may have contact with detainees or have in place a system for otherwise capturing such information for current employees.

(f) The agency shall ask all applicants and employees who may have contact with detainees directly about previous misconduct described in paragraph (a) of this section in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of reviews of current employees. The agency shall also impose upon employees a continuing affirmative duty to disclose any such misconduct.

(g) Material omissions regarding such misconduct, or the provision of materially false information, shall be grounds for termination.

(h) Unless prohibited by law, the agency shall provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.

§ 115.118 Upgrades to facilities and technologies.

(a) When designing or acquiring any new lockup and in planning any substantial expansion or modification of existing lockups, the agency shall consider the effect of the design, acquisition, expansion, or modification

upon the agency's ability to protect detainees from sexual abuse.

(b) When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, the agency shall consider how such technology may enhance the agency's ability to protect detainees from sexual abuse.

Responsive Planning

§ 115.121 Evidence protocol and forensic medical examinations.

(a) To the extent the agency is responsible for investigating allegations of sexual abuse in its lockups, the agency shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.

(b) The protocol shall be developmentally appropriate for youth where applicable, and, as appropriate, shall be adapted from or otherwise based on the most recent edition of the U.S. Department of Justice's Office on Violence Against Women publication, ''A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents,'' or similarly comprehensive and authoritative protocols developed after 2011. As part of the training required in § 115.131, employees and volunteers who may have contact with lockup detainees shall receive basic training regarding how to detect and respond to victims of sexual abuse.

(c) The agency shall offer all victims of sexual abuse access to forensic medical examinations whether on-site or at an outside facility, without financial cost, where evidentiarily or medically appropriate. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The agency shall document its efforts to provide SAFEs or SANEs.

(d) If the detainee is transported for a forensic examination to an outside hospital that offers victim advocacy services, the detainee shall be permitted to use such services to the extent available, consistent with security needs.

(e) To the extent the agency itself is not responsible for investigating allegations of sexual abuse, the agency shall request that the investigating agency follow the requirements of paragraphs (a) through (d) of this section.

(f) The requirements in paragraphs (a) through (e) of this section shall also apply to:

(1) Any State entity outside of the agency that is responsible for investigating allegations of sexual abuse in lockups; and

(2) Any Department of Justice component that is responsible for investigating allegations of sexual abuse in lockups.

§ 115.122 Policies to ensure referrals of allegations for investigations.

(a) The agency shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment.

(b) If another law enforcement agency is responsible for conducting investigations of allegations of sexual abuse or sexual harassment in its lockups, the agency shall have in place a policy to ensure that such allegations are referred for investigation to an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior. The agency shall publish such policy, including a description of responsibilities of both the agency and the investigating entity, on its Web site, or, if it does not have one, make available the policy through other means. The agency shall document all such referrals.

(c) Any State entity responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in lockups shall have in place a policy governing the conduct of such investigations.

(d) Any Department of Justice component responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in lockups shall have in place a policy governing the conduct of such investigations.

Training and Education

§ 115.131 Employee and volunteer training.

(a) The agency shall train all employees and volunteers who may have contact with lockup detainees to be able to fulfill their responsibilities under agency sexual abuse prevention, detection, and response policies and procedures, including training on:

(1) The agency's zero-tolerance policy and detainees' right to be free from sexual abuse and sexual harassment;

(2) The dynamics of sexual abuse and harassment in confinement settings, including which detainees are most vulnerable in lockup settings;

(3) The right of detainees and employees to be free from retaliation for reporting sexual abuse or harassment;

(4) How to detect and respond to signs of threatened and actual abuse;

(5) How to communicate effectively and professionally with all detainees; and

(6) How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.

(b) All current employees and volunteers who may have contact with lockup detainees shall be trained within one year of the effective date of the PREA standards, and the agency shall provide annual refresher information to all such employees and volunteers to ensure that they know the agency's current sexual abuse and sexual harassment policies and procedures.

(c) The agency shall document, through employee signature or electronic verification, that employees understand the training they have received.

§ 115.132 Detainee, contractor, and inmate worker notification of the agency's zero-tolerance policy.

(a) During the intake process, employees shall notify all detainees of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment.

(b) The agency shall ensure that, upon entering the lockup, contractors and any inmates who work in the lockup are informed of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment.

§ 115.133 [Reserved]

§ 115.134 Specialized training: Investigations.

(a) In addition to the general training provided to all employees and volunteers pursuant to § 115.131, the agency shall ensure that, to the extent the agency itself conducts sexual abuse investigations, its investigators have received training in conducting such investigations in confinement settings.

(b) Specialized training shall include techniques for interviewing sexual abuse victims, proper use of *Miranda* and *Garrity* warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral.

(c) The agency shall maintain documentation that agency investigators have completed the required specialized training in conducting sexual abuse investigations.

(d) Any State entity or Department of Justice component that investigates

sexual abuse in lockups shall provide such training to their agents and investigators who conduct such investigations.

§ 115.135 [Reserved]

Screening for Risk of Sexual Victimization and Abusiveness

§ 115.141 Screening for risk of victimization and abusiveness.

(a) In lockups that are not utilized to house detainees overnight, before placing any detainees together in a holding cell, staff shall consider whether, based on the information before them, a detainee may be at a high risk of being sexually abused and, when appropriate, shall take necessary steps to mitigate any such danger to the detainee.

(b) In lockups that are utilized to house detainees overnight, all detainees shall be screened to assess their risk of being sexually abused by other detainees or sexually abusive toward other detainees.

(c) In lockups described in paragraph (b) of this section, staff shall ask the detainee about his or her own perception of vulnerability.

(d) The screening process in the lockups described in paragraph (b) of this section shall also consider, to the extent that the information is available, the following criteria to screen detainees for risk of sexual victimization:

(1) Whether the detainee has a mental, physical, or developmental disability;

(2) The age of the detainee;

(3) The physical build and appearance of the detainee;

(4) Whether the detainee has previously been incarcerated; and

(5) The nature of the detainee's alleged offense and criminal history.

§ 115.142 [Reserved]

§ 115.143 [Reserved]

Reporting

§ 115.151 Detainee reporting.

(a) The agency shall provide multiple ways for detainees to privately report sexual abuse and sexual harassment, retaliation by other detainees or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents.

(b) The agency shall also inform detainees of at least one way to report abuse or harassment to a public or private entity or office that is not part of the agency, and that is able to receive and immediately forward detainee reports of sexual abuse and sexual harassment to agency officials, allowing the detainee to remain anonymous upon request.

(c) Staff shall accept reports made verbally, in writing, anonymously, and from third parties and promptly document any verbal reports.

(d) The agency shall provide a method for staff to privately report sexual abuse and sexual harassment of detainees.

§ 115.152 [Reserved]

§ 115.153 [Reserved]

§ 115.154 Third-party reporting.

The agency shall establish a method to receive third-party reports of sexual abuse and sexual harassment in its lockups and shall distribute publicly information on how to report sexual abuse and sexual harassment on behalf of a detainee.

Official Response Following a Detainee Report

§ 115.161 Staff and agency reporting duties.

(a) The agency shall require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in an agency lockup; retaliation against detainees or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.

(b) Apart from reporting to designated supervisors or officials, staff shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary, as specified in agency policy, to make treatment and investigation decisions.

(c) If the alleged victim is under the age of 18 or considered a vulnerable adult under a State or local vulnerable persons statute, the agency shall report the allegation to the designated State or local services agency under applicable mandatory reporting laws.

(d) The agency shall report all allegations of sexual abuse, including third-party and anonymous reports, to the agency's designated investigators.

§ 115.162 Agency protection duties.

When an agency learns that a detainee is subject to a substantial risk of imminent sexual abuse, it shall take immediate action to protect the detainee.

§ 115.163 Reporting to other confinement facilities.

(a) Upon receiving an allegation that a detainee was sexually abused while confined at another facility, the head of the facility that received the allegation shall notify the head of the facility or appropriate office of the agency where the alleged abuse occurred.

(b) Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation.

(c) The agency shall document that it has provided such notification.

(d) The facility head or agency office that receives such notification shall ensure that the allegation is investigated in accordance with these standards.

§ 115.164 Staff first responder duties.

(a) Upon learning of an allegation that a detainee was sexually abused, the first law enforcement staff member to respond to the report shall be required to:

(1) Separate the alleged victim and abuser;

(2) Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence;

(3) If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and

(4) If the abuse occurred within a time period that still allows for the collection of physical evidence, ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.

(b) If the first staff responder is not a law enforcement staff member, the responder shall be required to request that the alleged victim not take any actions that could destroy physical evidence and then notify law enforcement staff.

§ 115.165 Coordinated response.

(a) The agency shall develop a written institutional plan to coordinate actions taken in response to a lockup incident of sexual abuse, among staff first responders, medical and mental health practitioners, investigators, and agency leadership.

(b) If a victim is transferred from the lockup to a jail, prison, or medical facility, the agency shall, as permitted by law, inform the receiving facility of the incident and the victim's potential need for medical or social services, unless the victim requests otherwise.

§ 115.166 Preservation of ability to protect detainees from contact with abusers.

(a) Neither the agency nor any other governmental entity responsible for collective bargaining on the agency's behalf shall enter into or renew any collective bargaining agreement or other agreement that limits the agency's ability to remove alleged staff sexual abusers from contact with detainees pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted.

(b) Nothing in this standard shall restrict the entering into or renewal of agreements that govern:

(1) The conduct of the disciplinary process, as long as such agreements are not inconsistent with the provisions of §§ 115.172 and 115.176; or

(2) Whether a no-contact assignment that is imposed pending the outcome of an investigation shall be expunged from or retained in the staff member's personnel file following a determination that the allegation of sexual abuse is not substantiated.

§ 115.167 Agency protection against retaliation.

(a) The agency shall establish a policy to protect all detainees and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other detainees or staff, and shall designate which staff members or departments are charged with monitoring retaliation.

(b) The agency shall employ multiple protection measures, such as housing changes or transfers for detainee victims or abusers, removal of alleged staff or detainee abusers from contact with victims, and emotional support services for staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.

(c) The agency shall monitor the conduct and treatment of detainees or staff who have reported sexual abuse and of detainees who were reported to have suffered sexual abuse, and shall act promptly to remedy any such retaliation.

(d) If any other individual who cooperates with an investigation expresses a fear of retaliation, the agency shall take appropriate measures to protect that individual against retaliation.

(e) An agency's obligation to monitor shall terminate if the agency determines that the allegation is unfounded.

§ 115.168 [Reserved]

Investigations

§ 115.171 Criminal and administrative agency investigations.

(a) When the agency conducts its own investigations into allegations of sexual abuse and sexual harassment, it shall do so promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports.

(b) Where sexual abuse is alleged, the agency shall use investigators who have received special training in sexual abuse investigations pursuant to § 115.134.

(c) Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.

(d) When the quality of evidence appears to support criminal prosecution, the agency shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.

(e) The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as detainee or staff. No agency shall require a detainee who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.

(f) Administrative investigations:

(1) Shall include an effort to determine whether staff actions or failures to act contributed to the abuse; and

(2) Shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.

(g) Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.

(h) Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.

(i) The agency shall retain all written reports referenced in paragraphs (f) and (g) of this section for as long as the alleged abuser is incarcerated or employed by the agency, plus five years.

(j) The departure of the alleged abuser or victim from the employment or control of the lockup or agency shall not provide a basis for terminating an investigation.

(k) Any State entity or Department of Justice component that conducts such investigations shall do so pursuant to the above requirements.

(l) When outside agencies investigate sexual abuse, the agency shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.

§ 115.172 Evidentiary standard for administrative investigations.

The agency shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.

§ 115.173 [Reserved]

Discipline

§ 115.176 Disciplinary sanctions for staff.

(a) Staff shall be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies.

(b) Termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual abuse.

(c) Disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.

(d) All terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.

§ 115.177 Corrective action for contractors and volunteers.

(a) Any contractor or volunteer who engages in sexual abuse shall be prohibited from contact with detainees and shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies.

(b) The facility shall take appropriate remedial measures, and shall consider whether to prohibit further contact with detainees, in the case of any other violation of agency sexual abuse or

sexual harassment policies by a contractor or volunteer.

§ 115.178 Referrals for prosecution for detainee-on-detainee sexual abuse.

(a) When there is probable cause to believe that a detainee sexually abused another detainee in a lockup, the agency shall refer the matter to the appropriate prosecuting authority.

(b) To the extent the agency itself is not responsible for investigating allegations of sexual abuse, the agency shall inform the investigating entity of this policy.

(c) Any State entity or Department of Justice component that is responsible for investigating allegations of sexual abuse in lockups shall be subject to this requirement.

Medical and Mental Care

§ 115.181 [Reserved]

§ 115.182 Access to emergency medical services.

(a) Detainee victims of sexual abuse in lockups shall receive timely, unimpeded access to emergency medical treatment.

(b) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

§ 115.183 [Reserved]

Data Collection and Review

§ 115.186 Sexual abuse incident reviews.

(a) The lockup shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded.

(b) Such review shall ordinarily occur within 30 days of the conclusion of the investigation.

(c) The review team shall include upper-level management officials, with input from line supervisors and investigators.

(d) The review team shall:

(1) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;

(2) Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the lockup;

(3) Examine the area in the lockup where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;

(4) Assess the adequacy of staffing levels in that area during different shifts;

(5) Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and

(6) Prepare a report of its findings, including but not necessarily limited to determinations made pursuant to paragraphs (d)(1) through (d)(5) of this section, and any recommendations for improvement and submit such report to the lockup head and agency PREA coordinator.

(e) The lockup shall implement the recommendations for improvement, or shall document its reasons for not doing so.

§ 115.187 Data collection.

(a) The agency shall collect accurate, uniform data for every allegation of sexual abuse at lockups under its direct control using a standardized instrument and set of definitions.

(b) The agency shall aggregate the incident-based sexual abuse data at least annually.

(c) The incident-based data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Local Jail Jurisdictions Survey of Sexual Violence conducted by the Department of Justice, or any subsequent form developed by the Department of Justice and designated for lockups.

(d) The agency shall maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews.

(e) The agency also shall obtain incident-based and aggregated data from any private agency with which it contracts for the confinement of its detainees.

(f) Upon request, the agency shall provide all such data from the previous calendar year to the Department of Justice no later than June 30.

§ 115.188 Data review for corrective action.

(a) The agency shall review data collected and aggregated pursuant to § 115.187 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including:

(1) Identifying problem areas;

(2) Taking corrective action on an ongoing basis; and

(3) Preparing an annual report of its findings and corrective actions for each lockup, as well as the agency as a whole.

(b) Such report shall include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of the agency's progress in addressing sexual abuse.

(c) The agency's report shall be approved by the agency head and made readily available to the public through its Web site or, if it does not have one, through other means.

(d) The agency may redact specific material from the reports when publication would present a clear and specific threat to the safety and security of a lockup, but must indicate the nature of the material redacted.

§ 115.189 Data storage, publication, and destruction.

(a) The agency shall ensure that data collected pursuant to § 115.187 are securely retained.

(b) The agency shall make all aggregated sexual abuse data, from lockups under its direct control and any private agencies with which it contracts, readily available to the public at least annually through its Web site or, if it does not have one, through other means.

(c) Before making aggregated sexual abuse data publicly available, the agency shall remove all personal identifiers.

(d) The agency shall maintain sexual abuse data collected pursuant to § 115.187 for at least 10 years after the date of the initial collection unless Federal, State, or local law requires otherwise.

Audits

§ 115.193 Audits of standards.

The agency shall conduct audits pursuant to §§ 115.401 through 115.405. Audits need not be conducted of individual lockups that are not utilized to house detainees overnight.

Subpart C—Standards for Community Confinement Facilities

Prevention Planning

§ 115.211 Zero tolerance of sexual abuse and sexual harassment; PREA coordinator.

(a) An agency shall have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the agency's approach to preventing, detecting, and responding to such conduct.

(b) An agency shall employ or designate an upper-level, agency-wide PREA coordinator, with sufficient time and authority to develop, implement, and oversee agency efforts to comply

with the PREA standards in all of its community confinement facilities.

§ 115.212 Contracting with other entities for the confinement of residents.

(a) A public agency that contracts for the confinement of its residents with private agencies or other entities, including other government agencies, shall include in any new contract or contract renewal the entity's obligation to adopt and comply with the PREA standards.

(b) Any new contract or contract renewal shall provide for agency contract monitoring to ensure that the contractor is complying with the PREA standards.

(c) Only in emergency circumstances in which all reasonable attempts to find a private agency or other entity in compliance with the PREA standards have failed, may the agency enter into a contract with an entity that fails to comply with these standards. In such a case, the public agency shall document its unsuccessful attempts to find an entity in compliance with the standards.

§ 115.213 Supervision and monitoring.

(a) For each facility, the agency shall develop and document a staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect residents against sexual abuse. In calculating adequate staffing levels and determining the need for video monitoring, agencies shall take into consideration:

(1) The physical layout of each facility;

(2) The composition of the resident population;

(3) The prevalence of substantiated and unsubstantiated incidents of sexual abuse; and

(4) Any other relevant factors.

(b) In circumstances where the staffing plan is not complied with, the facility shall document and justify all deviations from the plan.

(c) Whenever necessary, but no less frequently than once each year, the facility shall assess, determine, and document whether adjustments are needed to:

(1) The staffing plan established pursuant to paragraph (a) of this section;

(2) Prevailing staffing patterns;

(3) The facility's deployment of video monitoring systems and other monitoring technologies; and

(4) The resources the facility has available to commit to ensure adequate staffing levels.

§ 115.214 [Reserved]

§ 115.215 Limits to cross-gender viewing and searches.

(a) The facility shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners.

(b) As of August 20, 2015, or August 21, 2017 for a facility whose rated capacity does not exceed 50 residents, the facility shall not permit cross-gender pat-down searches of female residents, absent exigent circumstances. Facilities shall not restrict female residents' access to regularly available programming or other outside opportunities in order to comply with this provision.

(c) The facility shall document all cross-gender strip searches and cross-gender visual body cavity searches, and shall document all cross-gender pat-down searches of female residents.

(d) The facility shall implement policies and procedures that enable residents to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering an area where residents are likely to be showering, performing bodily functions, or changing clothing.

(e) The facility shall not search or physically examine a transgender or intersex resident for the sole purpose of determining the resident's genital status. If the resident's genital status is unknown, it may be determined during conversations with the resident, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.

(f) The agency shall train security staff in how to conduct cross-gender pat-down searches, and searches of transgender and intersex residents, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

§ 115.216 Residents with disabilities and residents who are limited English proficient.

(a) The agency shall take appropriate steps to ensure that residents with disabilities (including, for example, residents who are deaf or hard of hearing, those who are blind or have low vision, or those who have intellectual, psychiatric, or speech disabilities), have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment. Such steps shall include, when necessary to ensure effective communication with residents who are deaf or hard of hearing, providing access to interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. In addition, the agency shall ensure that written materials are provided in formats or through methods that ensure effective communication with residents with disabilities, including residents who have intellectual disabilities, limited reading skills, or who are blind or have low vision. An agency is not required to take actions that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity, or in undue financial and administrative burdens, as those terms are used in regulations promulgated under title II of the Americans With Disabilities Act, 28 CFR 35.164.

(b) The agency shall take reasonable steps to ensure meaningful access to all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment to residents who are limited English proficient, including steps to provide interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

(c) The agency shall not rely on resident interpreters, resident readers, or other types of resident assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the resident's safety, the performance of first-response duties under § 115.264, or the investigation of the resident's allegations.

§ 115.217 Hiring and promotion decisions.

(a) The agency shall not hire or promote anyone who may have contact with residents, and shall not enlist the services of any contractor who may have contact with residents, who—

(1) Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997);

(2) Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or

coercion, or if the victim did not consent or was unable to consent or refuse; or

(3) Has been civilly or administratively adjudicated to have engaged in the activity described in paragraph (a)(2) of this section.

(b) The agency shall consider any incidents of sexual harassment in determining whether to hire or promote anyone, or to enlist the services of any contractor, who may have contact with residents.

(c) Before hiring new employees who may have contact with residents, the agency shall:

(1) Perform a criminal background records check; and

(2) Consistent with Federal, State, and local law, make its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse.

(d) The agency shall also perform a criminal background records check before enlisting the services of any contractor who may have contact with residents.

(e) The agency shall either conduct criminal background records checks at least every five years of current employees and contractors who may have contact with residents or have in place a system for otherwise capturing such information for current employees.

(f) The agency shall also ask all applicants and employees who may have contact with residents directly about previous misconduct described in paragraph (a) of this section in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of reviews of current employees. The agency shall also impose upon employees a continuing affirmative duty to disclose any such misconduct.

(g) Material omissions regarding such misconduct, or the provision of materially false information, shall be grounds for termination.

(h) Unless prohibited by law, the agency shall provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.

§ 115.218 Upgrades to facilities and technologies.

(a) When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the agency shall consider the effect of the design, acquisition, expansion, or modification upon the agency's ability to protect residents from sexual abuse.

(b) When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, the agency shall consider how such technology may enhance the agency's ability to protect residents from sexual abuse.

Responsive Planning

§ 115.221 Evidence protocol and forensic medical examinations.

(a) To the extent the agency is responsible for investigating allegations of sexual abuse, the agency shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.

(b) The protocol shall be developmentally appropriate for youth where applicable, and, as appropriate, shall be adapted from or otherwise based on the most recent edition of the U.S. Department of Justice's Office on Violence Against Women publication, ''A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents,'' or similarly comprehensive and authoritative protocols developed after 2011.

(c) The agency shall offer all victims of sexual abuse access to forensic medical examinations whether on-site or at an outside facility, without financial cost, where evidentiarily or medically appropriate. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The agency shall document its efforts to provide SAFEs or SANEs.

(d) The agency shall attempt to make available to the victim a victim advocate from a rape crisis center. If a rape crisis center is not available to provide victim advocate services, the agency shall make available to provide these services a qualified staff member from a community-based organization or a qualified agency staff member. Agencies shall document efforts to secure services from rape crisis centers. For the purpose of this standard, a rape crisis center refers to an entity that provides intervention and related assistance, such as the services specified in 42 U.S.C. 14043g(b)(2)(C), to victims of sexual assault of all ages. The agency may utilize a rape crisis center that is part of a governmental unit as long as the center is not part of the criminal justice system (such as a law enforcement agency) and offers a comparable level of confidentiality as a nongovernmental entity that provides similar victim services.

(e) As requested by the victim, the victim advocate, qualified agency staff member, or qualified community-based organization staff member shall accompany and support the victim through the forensic medical examination process and investigatory interviews and shall provide emotional support, crisis intervention, information, and referrals.

(f) To the extent the agency itself is not responsible for investigating allegations of sexual abuse, the agency shall request that the investigating agency follow the requirements of paragraphs (a) through (e) of this section.

(g) The requirements of paragraphs (a) through (f) of this section shall also apply to:

(1) Any State entity outside of the agency that is responsible for investigating allegations of sexual abuse in community confinement facilities; and

(2) Any Department of Justice component that is responsible for investigating allegations of sexual abuse in community confinement facilities.

(h) For the purposes of this standard, a qualified agency staff member or a qualified community-based staff member shall be an individual who has been screened for appropriateness to serve in this role and has received education concerning sexual assault and forensic examination issues in general.

§ 115.222 Policies to ensure referrals of allegations for investigations.

(a) The agency shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment.

(b) The agency shall have in place a policy to ensure that allegations of sexual abuse or sexual harassment are referred for investigation to an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior. The agency shall publish such policy on its Web site or, if it does not have one, make the policy available through other means. The agency shall document all such referrals.

(c) If a separate entity is responsible for conducting criminal investigations, such publication shall describe the responsibilities of both the agency and the investigating entity.

(d) Any State entity responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in community confinement facilities shall have in place a policy governing the conduct of such investigations.

(e) Any Department of Justice component responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in community confinement facilities shall have in place a policy governing the conduct of such investigations.

Training and Education

§ 115.231 Employee training.

(a) The agency shall train all employees who may have contact with residents on:

(1) Its zero-tolerance policy for sexual abuse and sexual harassment;

(2) How to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;

(3) Residents' right to be free from sexual abuse and sexual harassment;

(4) The right of residents and employees to be free from retaliation for reporting sexual abuse and sexual harassment;

(5) The dynamics of sexual abuse and sexual harassment in confinement;

(6) The common reactions of sexual abuse and sexual harassment victims;

(7) How to detect and respond to signs of threatened and actual sexual abuse;

(8) How to avoid inappropriate relationships with residents;

(9) How to communicate effectively and professionally with residents, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming residents; and

(10) How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.

(b) Such training shall be tailored to the gender of the residents at the employee's facility. The employee shall receive additional training if the employee is reassigned from a facility that houses only male residents to a facility that houses only female residents, or vice versa.

(c) All current employees who have not received such training shall be trained within one year of the effective date of the PREA standards, and the agency shall provide each employee with refresher training every two years to ensure that all employees know the agency's current sexual abuse and sexual harassment policies and procedures. In years in which an employee does not receive refresher training, the agency shall provide refresher information on current sexual abuse and sexual harassment policies.

(d) The agency shall document, through employee signature or electronic verification, that employees understand the training they have received.

§ 115.232 Volunteer and contractor training.

(a) The agency shall ensure that all volunteers and contractors who have contact with residents have been trained on their responsibilities under the agency's sexual abuse and sexual harassment prevention, detection, and response policies and procedures.

(b) The level and type of training provided to volunteers and contractors shall be based on the services they provide and level of contact they have with residents, but all volunteers and contractors who have contact with residents shall be notified of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report such incidents.

(c) The agency shall maintain documentation confirming that volunteers and contractors understand the training they have received.

§ 115.233 Resident education.

(a) During the intake process, residents shall receive information explaining the agency's zero-tolerance policy regarding sexual abuse and sexual harassment, how to report incidents or suspicions of sexual abuse or sexual harassment, their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding agency policies and procedures for responding to such incidents.

(b) The agency shall provide refresher information whenever a resident is transferred to a different facility.

(c) The agency shall provide resident education in formats accessible to all residents, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled as well as residents who have limited reading skills.

(d) The agency shall maintain documentation of resident participation in these education sessions.

(e) In addition to providing such education, the agency shall ensure that key information is continuously and readily available or visible to residents through posters, resident handbooks, or other written formats.

§ 115.234 Specialized training: Investigations.

(a) In addition to the general training provided to all employees pursuant to § 115.231, the agency shall ensure that, to the extent the agency itself conducts sexual abuse investigations, its investigators have received training in conducting such investigations in confinement settings.

(b) Specialized training shall include techniques for interviewing sexual abuse victims, proper use of *Miranda* and *Garrity* warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral.

(c) The agency shall maintain documentation that agency investigators have completed the required specialized training in conducting sexual abuse investigations.

(d) Any State entity or Department of Justice component that investigates sexual abuse in confinement settings shall provide such training to its agents and investigators who conduct such investigations.

§ 115.235 Specialized training: Medical and mental health care.

(a) The agency shall ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in:

(1) How to detect and assess signs of sexual abuse and sexual harassment;

(2) How to preserve physical evidence of sexual abuse;

(3) How to respond effectively and professionally to victims of sexual abuse and sexual harassment; and

(4) How and to whom to report allegations or suspicions of sexual abuse and sexual harassment.

(b) If medical staff employed by the agency conduct forensic examinations, such medical staff shall receive the appropriate training to conduct such examinations.

(c) The agency shall maintain documentation that medical and mental health practitioners have received the training referenced in this standard either from the agency or elsewhere.

(d) Medical and mental health care practitioners shall also receive the training mandated for employees under § 115.231 or for contractors and volunteers under § 115.232, depending upon the practitioner's status at the agency.

Screening for Risk of Sexual Victimization and Abusiveness

§ 115.241 Screening for risk of victimization and abusiveness.

(a) All residents shall be assessed during an intake screening and upon transfer to another facility for their risk of being sexually abused by other residents or sexually abusive toward other residents.

(b) Intake screening shall ordinarily take place within 72 hours of arrival at the facility.

(c) Such assessments shall be conducted using an objective screening instrument.

(d) The intake screening shall consider, at a minimum, the following criteria to assess residents for risk of sexual victimization:

(1) Whether the resident has a mental, physical, or developmental disability;

(2) The age of the resident;

(3) The physical build of the resident;

(4) Whether the resident has previously been incarcerated;

(5) Whether the resident's criminal history is exclusively nonviolent;

(6) Whether the resident has prior convictions for sex offenses against an adult or child;

(7) Whether the resident is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;

(8) Whether the resident has previously experienced sexual victimization; and

(9) The resident's own perception of vulnerability.

(e) The intake screening shall consider prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse, as known to the agency, in assessing residents for risk of being sexually abusive.

(f) Within a set time period, not to exceed 30 days from the resident's arrival at the facility, the facility will reassess the resident's risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the intake screening.

(g) A resident's risk level shall be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the resident's risk of sexual victimization or abusiveness.

(h) Residents may not be disciplined for refusing to answer, or for not disclosing complete information in response to, questions asked pursuant to paragraphs (d)(1), (d)(7), (d)(8), or (d)(9) of this section.

(i) The agency shall implement appropriate controls on the dissemination within the facility of responses to questions asked pursuant to this standard in order to ensure that sensitive information is not exploited to the resident's detriment by staff or other residents.

§ 115.242 Use of screening information.

(a) The agency shall use information from the risk screening required by § 115.241 to inform housing, bed, work, education, and program assignments with the goal of keeping separate those residents at high risk of being sexually victimized from those at high risk of being sexually abusive.

(b) The agency shall make individualized determinations about how to ensure the safety of each resident.

(c) In deciding whether to assign a transgender or intersex resident to a facility for male or female residents, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the resident's health and safety, and whether the placement would present management or security problems.

(d) A transgender or intersex resident's own views with respect to his or her own safety shall be given serious consideration.

(e) Transgender and intersex residents shall be given the opportunity to shower separately from other residents.

(f) The agency shall not place lesbian, gay, bisexual, transgender, or intersex residents in dedicated facilities, units, or wings solely on the basis of such identification or status, unless such placement is in a dedicated facility unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such residents.

§ 115.243 [Reserved]

Reporting

§ 115.251 Resident reporting.

(a) The agency shall provide multiple internal ways for residents to privately report sexual abuse and sexual harassment, retaliation by other residents or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents.

(b) The agency shall also inform residents of at least one way to report abuse or harassment to a public or private entity or office that is not part of the agency and that is able to receive and immediately forward resident reports of sexual abuse and sexual harassment to agency officials, allowing the resident to remain anonymous upon request.

(c) Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports.

(d) The agency shall provide a method for staff to privately report sexual abuse and sexual harassment of residents.

§ 115.252 Exhaustion of administrative remedies.

(a) An agency shall be exempt from this standard if it does not have administrative procedures to address resident grievances regarding sexual abuse.

(b)(1) The agency shall not impose a time limit on when a resident may submit a grievance regarding an allegation of sexual abuse.

(2) The agency may apply otherwise-applicable time limits on any portion of a grievance that does not allege an incident of sexual abuse.

(3) The agency shall not require a resident to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse.

(4) Nothing in this section shall restrict the agency's ability to defend against a lawsuit filed by a resident on the ground that the applicable statute of limitations has expired.

(c) The agency shall ensure that—

(1) A resident who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint, and

(2) Such grievance is not referred to a staff member who is the subject of the complaint.

(d)(1) The agency shall issue a final agency decision on the merits of any portion of a grievance alleging sexual abuse within 90 days of the initial filing of the grievance.

(2) Computation of the 90-day time period shall not include time consumed by residents in preparing any administrative appeal.

(3) The agency may claim an extension of time to respond, of up to 70 days, if the normal time period for response is insufficient to make an appropriate decision. The agency shall notify the resident in writing of any such extension and provide a date by which a decision will be made.

(4) At any level of the administrative process, including the final level, if the resident does not receive a response within the time allotted for reply, including any properly noticed extension, the resident may consider the absence of a response to be a denial at that level.

(e)(1) Third parties, including fellow residents, staff members, family members, attorneys, and outside advocates, shall be permitted to assist residents in filing requests for administrative remedies relating to allegations of sexual abuse, and shall also be permitted to file such requests on behalf of residents.

(2) If a third party files such a request on behalf of a resident, the facility may require as a condition of processing the request that the alleged victim agree to have the request filed on his or her behalf, and may also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process.

(3) If the resident declines to have the request processed on his or her behalf, the agency shall document the resident's decision.

(f)(1) The agency shall establish procedures for the filing of an emergency grievance alleging that a resident is subject to a substantial risk of imminent sexual abuse.

(2) After receiving an emergency grievance alleging a resident is subject to a substantial risk of imminent sexual abuse, the agency shall immediately forward the grievance (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to a level of review at which immediate corrective action may be taken, shall provide an initial response within 48 hours, and shall issue a final agency decision within 5 calendar days. The initial response and final agency decision shall document the agency's determination whether the resident is in substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance.

(g) The agency may discipline a resident for filing a grievance related to alleged sexual abuse only where the agency demonstrates that the resident filed the grievance in bad faith.

§ 115.253 Resident access to outside confidential support services.

(a) The facility shall provide residents with access to outside victim advocates for emotional support services related to sexual abuse by giving residents mailing addresses and telephone numbers, including toll-free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations, and by enabling reasonable communication between residents and these organizations, in as confidential a manner as possible.

(b) The facility shall inform residents, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.

(c) The agency shall maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that are able to provide residents with confidential emotional support services related to sexual abuse. The agency shall maintain copies of agreements or documentation showing attempts to enter into such agreements.

§ 115.254 Third-party reporting.

The agency shall establish a method to receive third-party reports of sexual abuse and sexual harassment and shall distribute publicly information on how to report sexual abuse and sexual harassment on behalf of a resident.

Official Response Following a Resident Report

§ 115.261 Staff and agency reporting duties.

(a) The agency shall require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the agency; retaliation against residents or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.

(b) Apart from reporting to designated supervisors or officials, staff shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary, as specified in agency policy, to make treatment, investigation, and other security and management decisions.

(c) Unless otherwise precluded by Federal, State, or local law, medical and mental health practitioners shall be required to report sexual abuse pursuant to paragraph (a) of this section and to inform residents of the practitioner's duty to report, and the limitations of confidentiality, at the initiation of services.

(d) If the alleged victim is under the age of 18 or considered a vulnerable adult under a State or local vulnerable persons statute, the agency shall report the allegation to the designated State or local services agency under applicable mandatory reporting laws.

(e) The facility shall report all allegations of sexual abuse and sexual harassment, including third-party and anonymous reports, to the facility's designated investigators.

§ 115.262 Agency protection duties.

When an agency learns that a resident is subject to a substantial risk of imminent sexual abuse, it shall take immediate action to protect the resident.

§ 115.263 Reporting to other confinement facilities.

(a) Upon receiving an allegation that a resident was sexually abused while confined at another facility, the head of the facility that received the allegation shall notify the head of the facility or appropriate office of the agency where the alleged abuse occurred.

(b) Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation.

(c) The agency shall document that it has provided such notification.

(d) The facility head or agency office that receives such notification shall ensure that the allegation is investigated in accordance with these standards.

§ 115.264 Staff first responder duties.

(a) Upon learning of an allegation that a resident was sexually abused, the first security staff member to respond to the report shall be required to:

(1) Separate the alleged victim and abuser;

(2) Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence;

(3) If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and

(4) If the abuse occurred within a time period that still allows for the collection of physical evidence, ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.

(b) If the first staff responder is not a security staff member, the responder shall be required to request that the alleged victim not take any actions that could destroy physical evidence and then notify security staff.

§ 115.265 Coordinated response.

The facility shall develop a written institutional plan to coordinate actions taken in response to an incident of sexual abuse, among staff first responders, medical and mental health practitioners, investigators, and facility leadership.

§ 115.266 Preservation of ability to protect residents from contact with abusers

(a) Neither the agency nor any other governmental entity responsible for collective bargaining on the agency's behalf shall enter into or renew any collective bargaining agreement or other agreement that limits the agency's ability to remove alleged staff sexual abusers from contact with residents pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted.

(b) Nothing in this standard shall restrict the entering into or renewal of agreements that govern:

(1) The conduct of the disciplinary process, as long as such agreements are not inconsistent with the provisions of §§ 115.272 and 115.276; or

(2) Whether a no-contact assignment that is imposed pending the outcome of an investigation shall be expunged from or retained in the staff member's personnel file following a determination that the allegation of sexual abuse is not substantiated.

§ 115.267 Agency protection against retaliation.

(a) The agency shall establish a policy to protect all residents and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other residents or staff and shall designate which staff members or departments are charged with monitoring retaliation.

(b) The agency shall employ multiple protection measures, such as housing changes or transfers for resident victims or abusers, removal of alleged staff or resident abusers from contact with victims, and emotional support services for residents or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.

(c) For at least 90 days following a report of sexual abuse, the agency shall monitor the conduct and treatment of residents or staff who reported the sexual abuse and of residents who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by residents or staff, and shall act promptly to remedy any such retaliation. Items the agency should monitor include any resident disciplinary reports, housing, or program changes, or negative performance reviews or reassignments of staff. The agency shall continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need.

(d) In the case of residents, such monitoring shall also include periodic status checks.

(e) If any other individual who cooperates with an investigation expresses a fear of retaliation, the agency shall take appropriate measures to protect that individual against retaliation.

(f) An agency's obligation to monitor shall terminate if the agency determines that the allegation is unfounded.

§ 115.268 [Reserved]

Investigations

§ 115.271 Criminal and administrative agency investigations.

(a) When the agency conducts its own investigations into allegations of sexual abuse and sexual harassment, it shall do so promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports.

(b) Where sexual abuse is alleged, the agency shall use investigators who have received special training in sexual abuse investigations pursuant to § 115.234.

(c) Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.

(d) When the quality of evidence appears to support criminal prosecution, the agency shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.

(e) The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as resident or staff. No agency shall require a resident who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.

(f) Administrative investigations:

(1) Shall include an effort to determine whether staff actions or failures to act contributed to the abuse; and

(2) Shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.

(g) Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.

(h) Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.

(i) The agency shall retain all written reports referenced in paragraphs (f) and (g) of this section for as long as the alleged abuser is incarcerated or employed by the agency, plus five years.

(j) The departure of the alleged abuser or victim from the employment or control of the facility or agency shall not provide a basis for terminating an investigation.

(k) Any State entity or Department of Justice component that conducts such investigations shall do so pursuant to the above requirements.

(l) When outside agencies investigate sexual abuse, the facility shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.

§ 115.272 Evidentiary standard for administrative investigations.

The agency shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.

§ 115.273 Reporting to residents.

(a) Following an investigation into a resident's allegation of sexual abuse suffered in an agency facility, the agency shall inform the resident as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.

(b) If the agency did not conduct the investigation, it shall request the relevant information from the investigative agency in order to inform the resident.

(c) Following a resident's allegation that a staff member has committed sexual abuse against the resident, the agency shall subsequently inform the resident (unless the agency has determined that the allegation is unfounded) whenever:

(1) The staff member is no longer posted within the resident's unit;

(2) The staff member is no longer employed at the facility;

(3) The agency learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or

(4) The agency learns that the staff member has been convicted on a charge related to sexual abuse within the facility.

(d) Following a resident's allegation that he or she has been sexually abused by another resident, the agency shall subsequently inform the alleged victim whenever:

(1) The agency learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or

(2) The agency learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.

(e) All such notifications or attempted notifications shall be documented.

(f) An agency's obligation to report under this standard shall terminate if the resident is released from the agency's custody.

Discipline

§ 115.276 Disciplinary sanctions for staff.

(a) Staff shall be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies.

(b) Termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual abuse.

(c) Disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.

(d) All terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.

§ 115.277 Corrective action for contractors and volunteers.

(a) Any contractor or volunteer who engages in sexual abuse shall be prohibited from contact with residents and shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies.

(b) The facility shall take appropriate remedial measures, and shall consider whether to prohibit further contact with residents, in the case of any other violation of agency sexual abuse or sexual harassment policies by a contractor or volunteer.

§ 115.278 Disciplinary sanctions for residents.

(a) Residents shall be subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the resident engaged in resident-on-resident sexual abuse or following a criminal finding of guilt for resident-on-resident sexual abuse.

(b) Sanctions shall be commensurate with the nature and circumstances of the abuse committed, the resident's disciplinary history, and the sanctions imposed for comparable offenses by other residents with similar histories.

(c) The disciplinary process shall consider whether a resident's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed.

(d) If the facility offers therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse, the facility shall consider whether to require the offending resident to participate in such interventions as a condition of access to programming or other benefits.

(e) The agency may discipline a resident for sexual contact with staff only upon a finding that the staff member did not consent to such contact.

(f) For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.

(g) An agency may, in its discretion, prohibit all sexual activity between residents and may discipline residents for such activity. An agency may not, however, deem such activity to constitute sexual abuse if it determines that the activity is not coerced.

Medical and Mental Care

§ 115.281 [Reserved]

§ 115.282 Access to emergency medical and mental health services.

(a) Resident victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment.

(b) If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, security staff first responders shall take preliminary steps to protect the victim pursuant to § 115.262 and shall immediately notify the appropriate medical and mental health practitioners.

(c) Resident victims of sexual abuse while incarcerated shall be offered timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where medically appropriate.

(d) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

§ 115.283 Ongoing medical and mental health care for sexual abuse victims and abusers.

(a) The facility shall offer medical and mental health evaluation and, as appropriate, treatment to all residents who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility.

(b) The evaluation and treatment of such victims shall include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody.

(c) The facility shall provide such victims with medical and mental health services consistent with the community level of care.

(d) Resident victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests.

(e) If pregnancy results from conduct specified in paragraph (d) of this section, such victims shall receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services.

(f) Resident victims of sexual abuse while incarcerated shall be offered tests for sexually transmitted infections as medically appropriate.

(g) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

(h) The facility shall attempt to conduct a mental health evaluation of all known resident-on-resident abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners.

Data Collection and Review

§ 115.286 Sexual abuse incident reviews.

(a) The facility shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded.

(b) Such review shall ordinarily occur within 30 days of the conclusion of the investigation.

(c) The review team shall include upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners.

(d) The review team shall:

(1) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;

(2) Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility;

(3) Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;

(4) Assess the adequacy of staffing levels in that area during different shifts;

(5) Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and

(6) Prepare a report of its findings, including but not necessarily limited to determinations made pursuant to paragraphs (d)(1) through (d)(5) of this section, and any recommendations for improvement, and submit such report to the facility head and PREA compliance manager.

(e) The facility shall implement the recommendations for improvement, or shall document its reasons for not doing so.

§ 115.287 Data collection.

(a) The agency shall collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions.

(b) The agency shall aggregate the incident-based sexual abuse data at least annually.

(c) The incident-based data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice.

(d) The agency shall maintain, review, and collect data as needed from all available incident-based documents including reports, investigation files, and sexual abuse incident reviews.

(e) The agency also shall obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its residents.

(f) Upon request, the agency shall provide all such data from the previous calendar year to the Department of Justice no later than June 30.

§ 115.288 Data review for corrective action.

(a) The agency shall review data collected and aggregated pursuant to § 115.287 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including:

(1) Identifying problem areas;

(2) Taking corrective action on an ongoing basis; and

(3) Preparing an annual report of its findings and corrective actions for each facility, as well as the agency as a whole.

(b) Such report shall include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of the agency's progress in addressing sexual abuse.

(c) The agency's report shall be approved by the agency head and made readily available to the public through its Web site or, if it does not have one, through other means.

(d) The agency may redact specific material from the reports when publication would present a clear and specific threat to the safety and security of a facility, but must indicate the nature of the material redacted.

§ 115.289 Data storage, publication, and destruction.

(a) The agency shall ensure that data collected pursuant to § 115.287 are securely retained.

(b) The agency shall make all aggregated sexual abuse data, from facilities under its direct control and private facilities with which it contracts, readily available to the public at least annually through its Web site or, if it does not have one, through other means.

(c) Before making aggregated sexual abuse data publicly available, the agency shall remove all personal identifiers.

(d) The agency shall maintain sexual abuse data collected pursuant to § 115.287 for at least 10 years after the date of the initial collection unless Federal, State, or local law requires otherwise.

Audits

§ 115.293 Audits of standards.

The agency shall conduct audits pursuant to §§ 115.401 through 115.405.

Subpart D—Standards for Juvenile Facilities

Prevention Planning

§ 115.311 Zero tolerance of sexual abuse and sexual harassment; PREA coordinator.

(a) An agency shall have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the agency's approach to preventing, detecting, and responding to such conduct.

(b) An agency shall employ or designate an upper-level, agency-wide PREA coordinator with sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its facilities.

(c) Where an agency operates more than one facility, each facility shall designate a PREA compliance manager with sufficient time and authority to coordinate the facility's efforts to comply with the PREA standards.

§ 115.312 Contracting with other entities for the confinement of residents.

(a) A public agency that contracts for the confinement of its residents with private agencies or other entities, including other government agencies, shall include in any new contract or contract renewal the entity's obligation to adopt and comply with the PREA standards.

(b) Any new contract or contract renewal shall provide for agency contract monitoring to ensure that the contractor is complying with the PREA standards.

§ 115.313 Supervision and monitoring.

(a) The agency shall ensure that each facility it operates shall develop, implement, and document a staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect residents against sexual abuse. In calculating adequate staffing levels and determining the need for video monitoring, facilities shall take into consideration:

(1) Generally accepted juvenile detention and correctional/secure residential practices;

(2) Any judicial findings of inadequacy;

(3) Any findings of inadequacy from Federal investigative agencies;

(4) Any findings of inadequacy from internal or external oversight bodies;

(5) All components of the facility's physical plant (including ''blind spots'' or areas where staff or residents may be isolated);

(6) The composition of the resident population;

(7) The number and placement of supervisory staff;

(8) Institution programs occurring on a particular shift;

(9) Any applicable State or local laws, regulations, or standards;

(10) The prevalence of substantiated and unsubstantiated incidents of sexual abuse; and

(11) Any other relevant factors.

(b) The agency shall comply with the staffing plan except during limited and discrete exigent circumstances, and shall fully document deviations from the plan during such circumstances.

(c) Each secure juvenile facility shall maintain staff ratios of a minimum of 1:8 during resident waking hours and 1:16 during resident sleeping hours, except during limited and discrete exigent circumstances, which shall be fully documented. Only security staff shall be included in these ratios. Any facility that, as of the date of publication of this final rule, is not already obligated by law, regulation, or judicial consent decree to maintain the staffing ratios set forth in this paragraph shall have until October 1, 2017, to achieve compliance.

(d) Whenever necessary, but no less frequently than once each year, for each facility the agency operates, in consultation with the PREA coordinator required by § 115.311, the agency shall assess, determine, and document whether adjustments are needed to:

(1) The staffing plan established pursuant to paragraph (a) of this section;

(2) Prevailing staffing patterns;

(3) The facility's deployment of video monitoring systems and other monitoring technologies; and

(4) The resources the facility has available to commit to ensure adherence to the staffing plan.

(e) Each secure facility shall implement a policy and practice of having intermediate-level or higher level supervisors conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment. Such policy and practice shall be implemented for night shifts as well as day shifts. Each secure facility shall have a policy to prohibit staff from alerting other staff members that these supervisory rounds are occurring, unless such announcement is related to the legitimate operational functions of the facility.

§ 115.314 [Reserved]

§ 115.315 Limits to cross-gender viewing and searches.

(a) The facility shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners.

(b) The agency shall not conduct cross-gender pat-down searches except in exigent circumstances.

(c) The facility shall document and justify all cross-gender strip searches, cross-gender visual body cavity searches, and cross-gender pat-down searches.

(d) The facility shall implement policies and procedures that enable residents to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering a resident housing unit. In facilities (such as group homes) that do not contain discrete housing units, staff of the opposite gender shall be required to announce their presence when entering an area where residents are likely to be showering, performing bodily functions, or changing clothing.

(e) The facility shall not search or physically examine a transgender or intersex resident for the sole purpose of determining the resident's genital status. If the resident's genital status is unknown, it may be determined during conversations with the resident, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.

(f) The agency shall train security staff in how to conduct cross-gender pat-down searches, and searches of transgender and intersex residents, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

§ 115.316 Residents with disabilities and residents who are limited English proficient.

(a) The agency shall take appropriate steps to ensure that residents with disabilities (including, for example, residents who are deaf or hard of hearing, those who are blind or have low vision, or those who have intellectual, psychiatric, or speech disabilities), have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment. Such steps shall include, when necessary to ensure effective communication with residents who are deaf or hard of hearing, providing access to interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. In addition, the agency shall ensure that written materials are provided in formats or through methods that ensure effective communication with residents with disabilities, including residents who have intellectual disabilities, limited reading skills, or who are blind or have low vision. An agency is not required to take actions that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity, or in undue financial and administrative burdens, as those terms are used in regulations promulgated under title II of the Americans With Disabilities Act, 28 CFR 35.164.

(b) The agency shall take reasonable steps to ensure meaningful access to all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment to residents who are limited English proficient, including steps to provide interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

(c) The agency shall not rely on resident interpreters, resident readers, or other types of resident assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the resident's safety, the performance of first-response duties under § 115.364, or the investigation of the resident's allegations.

§ 115.317 Hiring and promotion decisions.

(a) The agency shall not hire or promote anyone who may have contact with residents, and shall not enlist the services of any contractor who may have contact with residents, who—

(1) Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997);

(2) Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or

(3) Has been civilly or administratively adjudicated to have engaged in the activity described in paragraph (a)(2) of this section.

(b) The agency shall consider any incidents of sexual harassment in determining whether to hire or promote anyone, or to enlist the services of any

contractor, who may have contact with residents.

(c) Before hiring new employees who may have contact with residents, the agency shall:

(1) Perform a criminal background records check;

(2) Consult any child abuse registry maintained by the State or locality in which the employee would work; and

(3) Consistent with Federal, State, and local law, make its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse.

(d) The agency shall also perform a criminal background records check, and consult applicable child abuse registries, before enlisting the services of any contractor who may have contact with residents.

(e) The agency shall either conduct criminal background records checks at least every five years of current employees and contractors who may have contact with residents or have in place a system for otherwise capturing such information for current employees.

(f) The agency shall also ask all applicants and employees who may have contact with residents directly about previous misconduct described in paragraph (a) of this section in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of reviews of current employees. The agency shall also impose upon employees a continuing affirmative duty to disclose any such misconduct.

(g) Material omissions regarding such misconduct, or the provision of materially false information, shall be grounds for termination.

(h) Unless prohibited by law, the agency shall provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.

§ 115.318 Upgrades to facilities and technologies.

(a) When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the agency shall consider the effect of the design, acquisition, expansion, or modification upon the agency's ability to protect residents from sexual abuse.

(b) When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, the agency shall consider how such technology may enhance the agency's ability to protect residents from sexual abuse.

Responsive Planning

§ 115.321 Evidence protocol and forensic medical examinations.

(a) To the extent the agency is responsible for investigating allegations of sexual abuse, the agency shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.

(b) The protocol shall be developmentally appropriate for youth and, as appropriate, shall be adapted from or otherwise based on the most recent edition of the U.S. Department of Justice's Office on Violence Against Women publication, ''A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents,'' or similarly comprehensive and authoritative protocols developed after 2011.

(c) The agency shall offer all residents who experience sexual abuse access to forensic medical examinations whether on-site or at an outside facility, without financial cost, where evidentiarily or medically appropriate. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The agency shall document its efforts to provide SAFEs or SANEs.

(d) The agency shall attempt to make available to the victim a victim advocate from a rape crisis center. If a rape crisis center is not available to provide victim advocate services, the agency shall make available to provide these services a qualified staff member from a community-based organization or a qualified agency staff member. Agencies shall document efforts to secure services from rape crisis centers. For the purpose of this standard, a rape crisis center refers to an entity that provides intervention and related assistance, such as the services specified in 42 U.S.C. 14043g(b)(2)(C), to victims of sexual assault of all ages. The agency may utilize a rape crisis center that is part of a governmental unit as long as the center is not part of the criminal justice system (such as a law enforcement agency) and offers a comparable level of confidentiality as a nongovernmental entity that provides similar victim services.

(e) As requested by the victim, the victim advocate, qualified agency staff member, or qualified community-based organization staff member shall accompany and support the victim through the forensic medical examination process and investigatory interviews and shall provide emotional support, crisis intervention, information, and referrals.

(f) To the extent the agency itself is not responsible for investigating allegations of sexual abuse, the agency shall request that the investigating agency follow the requirements of paragraphs (a) through (e) of this section.

(g) The requirements of paragraphs (a) through (f) of this section shall also apply to:

(1) Any State entity outside of the agency that is responsible for investigating allegations of sexual abuse in juvenile facilities; and

(2) Any Department of Justice component that is responsible for investigating allegations of sexual abuse in juvenile facilities.

(h) For the purposes of this standard, a qualified agency staff member or a qualified community-based staff member shall be an individual who has been screened for appropriateness to serve in this role and has received education concerning sexual assault and forensic examination issues in general.

§ 115.322 Policies to ensure referrals of allegations for investigations.

(a) The agency shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment.

(b) The agency shall have in place a policy to ensure that allegations of sexual abuse or sexual harassment are referred for investigation to an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior. The agency shall publish such policy on its Web site or, if it does not have one, make the policy available through other means. The agency shall document all such referrals.

(c) If a separate entity is responsible for conducting criminal investigations, such publication shall describe the responsibilities of both the agency and the investigating entity.

(d) Any State entity responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in juvenile facilities shall have in place a policy governing the conduct of such investigations.

(e) Any Department of Justice component responsible for conducting administrative or criminal investigations of sexual abuse or sexual

harassment in juvenile facilities shall have in place a policy governing the conduct of such investigations.

Training and Education

§ 115.331 Employee training.

(a) The agency shall train all employees who may have contact with residents on:

(1) Its zero-tolerance policy for sexual abuse and sexual harassment;

(2) How to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;

(3) Residents' right to be free from sexual abuse and sexual harassment;

(4) The right of residents and employees to be free from retaliation for reporting sexual abuse and sexual harassment;

(5) The dynamics of sexual abuse and sexual harassment in juvenile facilities;

(6) The common reactions of juvenile victims of sexual abuse and sexual harassment;

(7) How to detect and respond to signs of threatened and actual sexual abuse and how to distinguish between consensual sexual contact and sexual abuse between residents;

(8) How to avoid inappropriate relationships with residents;

(9) How to communicate effectively and professionally with residents, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming residents; and

(10) How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities;

(11) Relevant laws regarding the applicable age of consent.

(b) Such training shall be tailored to the unique needs and attributes of residents of juvenile facilities and to the gender of the residents at the employee's facility. The employee shall receive additional training if the employee is reassigned from a facility that houses only male residents to a facility that houses only female residents, or vice versa.

(c) All current employees who have not received such training shall be trained within one year of the effective date of the PREA standards, and the agency shall provide each employee with refresher training every two years to ensure that all employees know the agency's current sexual abuse and sexual harassment policies and procedures. In years in which an employee does not receive refresher training, the agency shall provide refresher information on current sexual abuse and sexual harassment policies.

(d) The agency shall document, through employee signature or electronic verification, that employees understand the training they have received.

§ 115.332 Volunteer and contractor training.

(a) The agency shall ensure that all volunteers and contractors who have contact with residents have been trained on their responsibilities under the agency's sexual abuse and sexual harassment prevention, detection, and response policies and procedures.

(b) The level and type of training provided to volunteers and contractors shall be based on the services they provide and level of contact they have with residents, but all volunteers and contractors who have contact with residents shall be notified of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report such incidents.

(c) The agency shall maintain documentation confirming that volunteers and contractors understand the training they have received.

§ 115.333 Resident education.

(a) During the intake process, residents shall receive information explaining, in an age appropriate fashion, the agency's zero tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment.

(b) Within 10 days of intake, the agency shall provide comprehensive age-appropriate education to residents either in person or through video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding agency policies and procedures for responding to such incidents.

(c) Current residents who have not received such education shall be educated within one year of the effective date of the PREA standards, and shall receive education upon transfer to a different facility to the extent that the policies and procedures of the resident's new facility differ from those of the previous facility.

(d) The agency shall provide resident education in formats accessible to all residents, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as to residents who have limited reading skills.

(e) The agency shall maintain documentation of resident participation in these education sessions.

(f) In addition to providing such education, the agency shall ensure that key information is continuously and readily available or visible to residents through posters, resident handbooks, or other written formats.

§ 115.334 Specialized training: Investigations.

(a) In addition to the general training provided to all employees pursuant to § 115.331, the agency shall ensure that, to the extent the agency itself conducts sexual abuse investigations, its investigators have received training in conducting such investigations in confinement settings.

(b) Specialized training shall include techniques for interviewing juvenile sexual abuse victims, proper use of *Miranda* and *Garrity* warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral.

(c) The agency shall maintain documentation that agency investigators have completed the required specialized training in conducting sexual abuse investigations.

(d) Any State entity or Department of Justice component that investigates sexual abuse in juvenile confinement settings shall provide such training to its agents and investigators who conduct such investigations.

§ 115.335 Specialized training: Medical and mental health care.

(a) The agency shall ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in:

(1) How to detect and assess signs of sexual abuse and sexual harassment;

(2) How to preserve physical evidence of sexual abuse;

(3) How to respond effectively and professionally to juvenile victims of sexual abuse and sexual harassment; and

(4) How and to whom to report allegations or suspicions of sexual abuse and sexual harassment.

(b) If medical staff employed by the agency conduct forensic examinations, such medical staff shall receive the appropriate training to conduct such examinations.

(c) The agency shall maintain documentation that medical and mental health practitioners have received the training referenced in this standard either from the agency or elsewhere.

(d) Medical and mental health care practitioners shall also receive the training mandated for employees under § 115.331 or for contractors and volunteers under § 115.332, depending

upon the practitioner's status at the agency.

Screening for Risk of Sexual Victimization and Abusiveness

§ 115.341 Obtaining information from residents.

(a) Within 72 hours of the resident's arrival at the facility and periodically throughout a resident's confinement, the agency shall obtain and use information about each resident's personal history and behavior to reduce the risk of sexual abuse by or upon a resident.

(b) Such assessments shall be conducted using an objective screening instrument.

(c) At a minimum, the agency shall attempt to ascertain information about:

(1) Prior sexual victimization or abusiveness;

(2) Any gender nonconforming appearance or manner or identification as lesbian, gay, bisexual, transgender, or intersex, and whether the resident may therefore be vulnerable to sexual abuse;

(3) Current charges and offense history;

(4) Age;

(5) Level of emotional and cognitive development;

(6) Physical size and stature;

(7) Mental illness or mental disabilities;

(8) Intellectual or developmental disabilities;

(9) Physical disabilities;

(10) The resident's own perception of vulnerability; and

(11) Any other specific information about individual residents that may indicate heightened needs for supervision, additional safety precautions, or separation from certain other residents.

(d) This information shall be ascertained through conversations with the resident during the intake process and medical and mental health screenings; during classification assessments; and by reviewing court records, case files, facility behavioral records, and other relevant documentation from the resident's files.

(e) The agency shall implement appropriate controls on the dissemination within the facility of responses to questions asked pursuant to this standard in order to ensure that sensitive information is not exploited to the resident's detriment by staff or other residents.

§ 115.342 Placement of residents in housing, bed, program, education, and work assignments.

(a) The agency shall use all information obtained pursuant to § 115.341 and subsequently to make housing, bed, program, education, and work assignments for residents with the goal of keeping all residents safe and free from sexual abuse.

(b) Residents may be isolated from others only as a last resort when less restrictive measures are inadequate to keep them and other residents safe, and then only until an alternative means of keeping all residents safe can be arranged. During any period of isolation, agencies shall not deny residents daily large-muscle exercise and any legally required educational programming or special education services. Residents in isolation shall receive daily visits from a medical or mental health care clinician. Residents shall also have access to other programs and work opportunities to the extent possible.

(c) Lesbian, gay, bisexual, transgender, or intersex residents shall not be placed in particular housing, bed, or other assignments solely on the basis of such identification or status, nor shall agencies consider lesbian, gay, bisexual, transgender, or intersex identification or status as an indicator of likelihood of being sexually abusive.

(d) In deciding whether to assign a transgender or intersex resident to a facility for male or female residents, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the resident's health and safety, and whether the placement would present management or security problems.

(e) Placement and programming assignments for each transgender or intersex resident shall be reassessed at least twice each year to review any threats to safety experienced by the resident.

(f) A transgender or intersex resident's own views with respect to his or her own safety shall be given serious consideration.

(g) Transgender and intersex residents shall be given the opportunity to shower separately from other residents.

(h) If a resident is isolated pursuant to paragraph (b) of this section, the facility shall clearly document:

(1) The basis for the facility's concern for the resident's safety; and

(2) The reason why no alternative means of separation can be arranged.

(i) Every 30 days, the facility shall afford each resident described in paragraph (h) of this section a review to determine whether there is a continuing need for separation from the general population.

§ 115.343 [Reserved]

Reporting

§ 115.351 Resident reporting.

(a) The agency shall provide multiple internal ways for residents to privately report sexual abuse and sexual harassment, retaliation by other residents or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents.

(b) The agency shall also provide at least one way for residents to report abuse or harassment to a public or private entity or office that is not part of the agency and that is able to receive and immediately forward resident reports of sexual abuse and sexual harassment to agency officials, allowing the resident to remain anonymous upon request. Residents detained solely for civil immigration purposes shall be provided information on how to contact relevant consular officials and relevant officials at the Department of Homeland Security.

(c) Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports.

(d) The facility shall provide residents with access to tools necessary to make a written report.

(e) The agency shall provide a method for staff to privately report sexual abuse and sexual harassment of residents.

§ 115.352 Exhaustion of administrative remedies.

(a) An agency shall be exempt from this standard if it does not have administrative procedures to address resident grievances regarding sexual abuse.

(b)(1) The agency shall not impose a time limit on when a resident may submit a grievance regarding an allegation of sexual abuse.

(2) The agency may apply otherwise-applicable time limits on any portion of a grievance that does not allege an incident of sexual abuse.

(3) The agency shall not require a resident to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse.

(4) Nothing in this section shall restrict the agency's ability to defend against a lawsuit filed by a resident on the ground that the applicable statute of limitations has expired.

(c) The agency shall ensure that—

(1) A resident who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint, and

(2) Such grievance is not referred to a staff member who is the subject of the complaint.

(d)(1) The agency shall issue a final agency decision on the merits of any portion of a grievance alleging sexual abuse within 90 days of the initial filing of the grievance.

(2) Computation of the 90-day time period shall not include time consumed by residents in preparing any administrative appeal.

(3) The agency may claim an extension of time to respond, of up to 70 days, if the normal time period for response is insufficient to make an appropriate decision. The agency shall notify the resident in writing of any such extension and provide a date by which a decision will be made.

(4) At any level of the administrative process, including the final level, if the resident does not receive a response within the time allotted for reply, including any properly noticed extension, the resident may consider the absence of a response to be a denial at that level.

(e)(1) Third parties, including fellow residents, staff members, family members, attorneys, and outside advocates, shall be permitted to assist residents in filing requests for administrative remedies relating to allegations of sexual abuse, and shall also be permitted to file such requests on behalf of residents.

(2) If a third party, other than a parent or legal guardian, files such a request on behalf of a resident, the facility may require as a condition of processing the request that the alleged victim agree to have the request filed on his or her behalf, and may also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process.

(3) If the resident declines to have the request processed on his or her behalf, the agency shall document the resident's decision.

(4) A parent or legal guardian of a juvenile shall be allowed to file a grievance regarding allegations of sexual abuse, including appeals, on behalf of such juvenile. Such a grievance shall not be conditioned upon the juvenile agreeing to have the request filed on his or her behalf.

(f)(1) The agency shall establish procedures for the filing of an emergency grievance alleging that a resident is subject to a substantial risk of imminent sexual abuse.

(2) After receiving an emergency grievance alleging a resident is subject to a substantial risk of imminent sexual abuse, the agency shall immediately forward the grievance (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to a level of review at which immediate corrective action may be taken, shall provide an initial response within 48 hours, and shall issue a final agency decision within 5 calendar days. The initial response and final agency decision shall document the agency's determination whether the resident is in substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance.

(g) The agency may discipline a resident for filing a grievance related to alleged sexual abuse only where the agency demonstrates that the resident filed the grievance in bad faith.

§ 115.353 Resident access to outside support services and legal representation.

(a) The facility shall provide residents with access to outside victim advocates for emotional support services related to sexual abuse, by providing, posting, or otherwise making accessible mailing addresses and telephone numbers, including toll free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations, and, for persons detained solely for civil immigration purposes, immigrant services agencies. The facility shall enable reasonable communication between residents and these organizations and agencies, in as confidential a manner as possible.

(b) The facility shall inform residents, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.

(c) The agency shall maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that are able to provide residents with confidential emotional support services related to sexual abuse. The agency shall maintain copies of agreements or documentation showing attempts to enter into such agreements.

(d) The facility shall also provide residents with reasonable and confidential access to their attorneys or other legal representation and reasonable access to parents or legal guardians.

§ 115.354 Third-party reporting.

The agency shall establish a method to receive third-party reports of sexual abuse and sexual harassment and shall distribute publicly information on how to report sexual abuse and sexual harassment on behalf of a resident.

Official Response Following a Resident Report

§ 115.361 Staff and agency reporting duties.

(a) The agency shall require all staff to report immediately and according to agency policy any knowledge, suspicion, or information they receive regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the agency; retaliation against residents or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.

(b) The agency shall also require all staff to comply with any applicable mandatory child abuse reporting laws.

(c) Apart from reporting to designated supervisors or officials and designated State or local services agencies, staff shall be prohibited from revealing any information related to a sexual abuse report to anyone other than to the extent necessary, as specified in agency policy, to make treatment, investigation, and other security and management decisions.

(d)(1) Medical and mental health practitioners shall be required to report sexual abuse to designated supervisors and officials pursuant to paragraph (a) of this section, as well as to the designated State or local services agency where required by mandatory reporting laws.

(2) Such practitioners shall be required to inform residents at the initiation of services of their duty to report and the limitations of confidentiality.

(e)(1) Upon receiving any allegation of sexual abuse, the facility head or his or her designee shall promptly report the allegation to the appropriate agency office and to the alleged victim's parents or legal guardians, unless the facility has official documentation showing the parents or legal guardians should not be notified.

(2) If the alleged victim is under the guardianship of the child welfare system, the report shall be made to the alleged victim's caseworker instead of the parents or legal guardians.

(3) If a juvenile court retains jurisdiction over the alleged victim, the facility head or designee shall also report the allegation to the juvenile's attorney or other legal representative of record within 14 days of receiving the allegation.

(f) The facility shall report all allegations of sexual abuse and sexual harassment, including third-party and anonymous reports, to the facility's designated investigators.

§ 115.362 Agency protection duties.

When an agency learns that a resident is subject to a substantial risk of imminent sexual abuse, it shall take immediate action to protect the resident.

§ 115.363 Reporting to other confinement facilities.

(a) Upon receiving an allegation that a resident was sexually abused while confined at another facility, the head of the facility that received the allegation shall notify the head of the facility or appropriate office of the agency where the alleged abuse occurred and shall also notify the appropriate investigative agency.

(b) Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation.

(c) The agency shall document that it has provided such notification.

(d) The facility head or agency office that receives such notification shall ensure that the allegation is investigated in accordance with these standards.

§ 115.364 Staff first responder duties.

(a) Upon learning of an allegation that a resident was sexually abused, the first staff member to respond to the report shall be required to:

(1) Separate the alleged victim and abuser;

(2) Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence;

(3) If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and

(4) If the abuse occurred within a time period that still allows for the collection of physical evidence, ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.

(b) If the first staff responder is not a security staff member, the responder shall be required to request that the alleged victim not take any actions that could destroy physical evidence, and then notify security staff.

§ 115.365 Coordinated response.

The facility shall develop a written institutional plan to coordinate actions taken in response to an incident of sexual abuse among staff first responders, medical and mental health practitioners, investigators, and facility leadership.

§ 115.366 Preservation of ability to protect residents from contact with abusers.

(a) Neither the agency nor any other governmental entity responsible for collective bargaining on the agency's behalf shall enter into or renew any collective bargaining agreement or other agreement that limits the agency's ability to remove alleged staff sexual abusers from contact with residents pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted.

(b) Nothing in this standard shall restrict the entering into or renewal of agreements that govern:

(1) The conduct of the disciplinary process, as long as such agreements are not inconsistent with the provisions of §§ 115.372 and 115.376; or

(2) Whether a no-contact assignment that is imposed pending the outcome of an investigation shall be expunged from or retained in the staff member's personnel file following a determination that the allegation of sexual abuse is not substantiated.

§ 115.367 Agency protection against retaliation.

(a) The agency shall establish a policy to protect all residents and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other residents or staff and shall designate which staff members or departments are charged with monitoring retaliation.

(b) The agency shall employ multiple protection measures, such as housing changes or transfers for resident victims or abusers, removal of alleged staff or resident abusers from contact with victims, and emotional support services for residents or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.

(c) For at least 90 days following a report of sexual abuse, the agency shall monitor the conduct or treatment of residents or staff who reported the sexual abuse and of residents who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by residents or staff, and shall act promptly to remedy any such retaliation. Items the agency should monitor include any resident disciplinary reports, housing, or program changes, or negative performance reviews or reassignments of staff. The agency shall continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need.

(d) In the case of residents, such monitoring shall also include periodic status checks.

(e) If any other individual who cooperates with an investigation expresses a fear of retaliation, the agency shall take appropriate measures to protect that individual against retaliation.

(f) An agency's obligation to monitor shall terminate if the agency determines that the allegation is unfounded.

§ 115.368 Post-allegation protective custody.

Any use of segregated housing to protect a resident who is alleged to have suffered sexual abuse shall be subject to the requirements of § 115.342.

Investigations

§ 115.371 Criminal and administrative agency investigations.

(a) When the agency conducts its own investigations into allegations of sexual abuse and sexual harassment, it shall do so promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports.

(b) Where sexual abuse is alleged, the agency shall use investigators who have received special training in sexual abuse investigations involving juvenile victims pursuant to § 115.334.

(c) Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.

(d) The agency shall not terminate an investigation solely because the source of the allegation recants the allegation.

(e) When the quality of evidence appears to support criminal prosecution, the agency shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.

(f) The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as resident or staff. No agency shall require a resident who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.

(g) Administrative investigations:

(1) Shall include an effort to determine whether staff actions or

failures to act contributed to the abuse; and

(2) Shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.

(h) Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.

(i) Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.

(j) The agency shall retain all written reports referenced in paragraphs (g) and (h) of this section for as long as the alleged abuser is incarcerated or employed by the agency, plus five years, unless the abuse was committed by a juvenile resident and applicable law requires a shorter period of retention.

(k) The departure of the alleged abuser or victim from the employment or control of the facility or agency shall not provide a basis for terminating an investigation.

(l) Any State entity or Department of Justice component that conducts such investigations shall do so pursuant to the above requirements.

(m) When outside agencies investigate sexual abuse, the facility shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.

§ 115.372 Evidentiary standard for administrative investigations.

The agency shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.

§ 115.373 Reporting to residents.

(a) Following an investigation into a resident's allegation of sexual abuse suffered in an agency facility, the agency shall inform the resident as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.

(b) If the agency did not conduct the investigation, it shall request the relevant information from the investigative agency in order to inform the resident.

(c) Following a resident's allegation that a staff member has committed sexual abuse against the resident, the agency shall subsequently inform the resident (unless the agency has determined that the allegation is unfounded) whenever:

(1) The staff member is no longer posted within the resident's unit;

(2) The staff member is no longer employed at the facility;

(3) The agency learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or

(4) The agency learns that the staff member has been convicted on a charge related to sexual abuse within the facility.

(d) Following a resident's allegation that he or she has been sexually abused by another resident, the agency shall subsequently inform the alleged victim whenever:

(1) The agency learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or

(2) The agency learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.

(e) All such notifications or attempted notifications shall be documented.

(f) An agency's obligation to report under this standard shall terminate if the resident is released from the agency's custody.

Discipline

§ 115.376 Disciplinary sanctions for staff.

(a) Staff shall be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies.

(b) Termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual abuse.

(c) Disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.

(d) All terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.

§ 115.377 Corrective action for contractors and volunteers.

(a) Any contractor or volunteer who engages in sexual abuse shall be prohibited from contact with residents and shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies.

(b) The facility shall take appropriate remedial measures, and shall consider whether to prohibit further contact with residents, in the case of any other violation of agency sexual abuse or sexual harassment policies by a contractor or volunteer.

§ 115.378 Interventions and disciplinary sanctions for residents.

(a) A resident may be subject to disciplinary sanctions only pursuant to a formal disciplinary process following an administrative finding that the resident engaged in resident-on-resident sexual abuse or following a criminal finding of guilt for resident-on-resident sexual abuse.

(b) Any disciplinary sanctions shall be commensurate with the nature and circumstances of the abuse committed, the resident's disciplinary history, and the sanctions imposed for comparable offenses by other residents with similar histories. In the event a disciplinary sanction results in the isolation of a resident, agencies shall not deny the resident daily large-muscle exercise or access to any legally required educational programming or special education services. Residents in isolation shall receive daily visits from a medical or mental health care clinician. Residents shall also have access to other programs and work opportunities to the extent possible.

(c) The disciplinary process shall consider whether a resident's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed.

(d) If the facility offers therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse, the facility shall consider whether to offer the offending resident participation in such interventions. The agency may require participation in such interventions as a condition of access to any rewards-based behavior management system or other behavior-based incentives, but not as a condition to access to general programming or education.

(e) The agency may discipline a resident for sexual contact with staff only upon a finding that the staff member did not consent to such contact.

(f) For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.

(g) An agency may, in its discretion, prohibit all sexual activity between residents and may discipline residents for such activity. An agency may not, however, deem such activity to constitute sexual abuse if it determines that the activity is not coerced.

Medical and Mental Care

§ 115.381 Medical and mental health screenings; history of sexual abuse.

(a) If the screening pursuant to § 115.341 indicates that a resident has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the resident is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening.

(b) If the screening pursuant to § 115.341 indicates that a resident has previously perpetrated sexual abuse, whether it occurred in an institutional setting or in the community, staff shall ensure that the resident is offered a follow-up meeting with a mental health practitioner within 14 days of the intake screening.

(c) Any information related to sexual victimization or abusiveness that occurred in an institutional setting shall be strictly limited to medical and mental health practitioners and other staff, as necessary, to inform treatment plans and security and management decisions, including housing, bed, work, education, and program assignments, or as otherwise required by Federal, State, or local law.

(d) Medical and mental health practitioners shall obtain informed consent from residents before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the resident is under the age of 18.

§ 115.382 Access to emergency medical and mental health services.

(a) Resident victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment.

(b) If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, staff first responders shall take preliminary steps to protect the victim pursuant to § 115.362 and shall immediately notify the appropriate medical and mental health practitioners.

(c) Resident victims of sexual abuse while incarcerated shall be offered timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where medically appropriate.

(d) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

§ 115.383 Ongoing medical and mental health care for sexual abuse victims and abusers.

(a) The facility shall offer medical and mental health evaluation and, as appropriate, treatment to all residents who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility.

(b) The evaluation and treatment of such victims shall include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody.

(c) The facility shall provide such victims with medical and mental health services consistent with the community level of care.

(d) Resident victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests.

(e) If pregnancy results from conduct specified in paragraph (d) of this section, such victims shall receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services.

(f) Resident victims of sexual abuse while incarcerated shall be offered tests for sexually transmitted infections as medically appropriate.

(g) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

(h) The facility shall attempt to conduct a mental health evaluation of all known resident-on-resident abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners.

Data Collection and Review

§ 115.386 Sexual abuse incident reviews.

(a) The facility shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded.

(b) Such review shall ordinarily occur within 30 days of the conclusion of the investigation.

(c) The review team shall include upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners.

(d) The review team shall:

(1) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;

(2) Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or, gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility;

(3) Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;

(4) Assess the adequacy of staffing levels in that area during different shifts;

(5) Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and

(6) Prepare a report of its findings, including but not necessarily limited to determinations made pursuant to paragraphs (d)(1) through (d)(5) of this section, and any recommendations for improvement and submit such report to the facility head and PREA compliance manager.

(e) The facility shall implement the recommendations for improvement, or shall document its reasons for not doing so.

§ 115.387 Data collection.

(a) The agency shall collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions.

(b) The agency shall aggregate the incident-based sexual abuse data at least annually.

(c) The incident-based data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice.

(d) The agency shall maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews.

(e) The agency also shall obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its residents.

(f) Upon request, the agency shall provide all such data from the previous calendar year to the Department of Justice no later than June 30.

§ 115.388 Data review for corrective action.

(a) The agency shall review data collected and aggregated pursuant to § 115.387 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including:

(1) Identifying problem areas;

(2) Taking corrective action on an ongoing basis; and

(3) Preparing an annual report of its findings and corrective actions for each facility, as well as the agency as a whole.

(b) Such report shall include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of the agency's progress in addressing sexual abuse.

(c) The agency's report shall be approved by the agency head and made readily available to the public through its Web site or, if it does not have one, through other means.

(d) The agency may redact specific material from the reports when publication would present a clear and specific threat to the safety and security of a facility, but must indicate the nature of the material redacted.

§ 115.389 Data storage, publication, and destruction.

(a) The agency shall ensure that data collected pursuant to § 115.387 are securely retained.

(b) The agency shall make all aggregated sexual abuse data, from facilities under its direct control and private facilities with which it contracts, readily available to the public at least annually through its Web site or, if it does not have one, through other means.

(c) Before making aggregated sexual abuse data publicly available, the agency shall remove all personal identifiers.

(d) The agency shall maintain sexual abuse data collected pursuant to § 115.387 for at least 10 years after the date of its initial collection unless Federal, State, or local law requires otherwise.

Audits

§ 115.393 Audits of standards.

The agency shall conduct audits pursuant to §§ 115.401 through 115.405.

Subpart E—Auditing and Corrective Action

§ 115.401 Frequency and scope of audits.

(a) During the three-year period starting on August 20, 2013, and during each three-year period thereafter, the agency shall ensure that each facility operated by the agency, or by a private organization on behalf of the agency, is audited at least once.

(b) During each one-year period starting on August 20, 2013, the agency shall ensure that at least one-third of each facility type operated by the agency, or by a private organization on behalf of the agency, is audited.

(c) The Department of Justice may send a recommendation to an agency for an expedited audit if the Department has reason to believe that a particular facility may be experiencing problems relating to sexual abuse. The recommendation may also include referrals to resources that may assist the agency with PREA-related issues.

(d) The Department of Justice shall develop and issue an audit instrument that will provide guidance on the conduct of and contents of the audit.

(e) The agency shall bear the burden of demonstrating compliance with the standards.

(f) The auditor shall review all relevant agency-wide policies, procedures, reports, internal and external audits, and accreditations for each facility type.

(g) The audits shall review, at a minimum, a sampling of relevant documents and other records and information for the most recent one-year period.

(h) The auditor shall have access to, and shall observe, all areas of the audited facilities.

(i) The auditor shall be permitted to request and receive copies of any relevant documents (including electronically stored information).

(j) The auditor shall retain and preserve all documentation (including, *e.g.,* video tapes and interview notes) relied upon in making audit determinations. Such documentation shall be provided to the Department of Justice upon request.

(k) The auditor shall interview a representative sample of inmates, residents, and detainees, and of staff, supervisors, and administrators.

(l) The auditor shall review a sampling of any available videotapes and other electronically available data (*e.g.,* Watchtour) that may be relevant to the provisions being audited.

(m) The auditor shall be permitted to conduct private interviews with inmates, residents, and detainees.

(n) Inmates, residents, and detainees shall be permitted to send confidential information or correspondence to the auditor in the same manner as if they were communicating with legal counsel.

(o) Auditors shall attempt to communicate with community-based or victim advocates who may have insight into relevant conditions in the facility.

§ 115.402 Auditor qualifications.

(a) An audit shall be conducted by:

(1) A member of a correctional monitoring body that is not part of, or under the authority of, the agency (but may be part of, or authorized by, the relevant State or local government);

(2) A member of an auditing entity such as an inspector general's or ombudsperson's office that is external to the agency; or

(3) Other outside individuals with relevant experience.

(b) All auditors shall be certified by the Department of Justice. The Department of Justice shall develop and issue procedures regarding the certification process, which shall include training requirements.

(c) No audit may be conducted by an auditor who has received financial compensation from the agency being audited (except for compensation received for conducting prior PREA audits) within the three years prior to the agency's retention of the auditor.

(d) The agency shall not employ, contract with, or otherwise financially compensate the auditor for three years subsequent to the agency's retention of the auditor, with the exception of contracting for subsequent PREA audits.

§ 115.403 Audit contents and findings.

(a) Each audit shall include a certification by the auditor that no conflict of interest exists with respect to his or her ability to conduct an audit of the agency under review.

(b) Audit reports shall state whether agency-wide policies and procedures comply with relevant PREA standards.

(c) For each PREA standard, the auditor shall determine whether the audited facility reaches one of the following findings: Exceeds Standard (substantially exceeds requirement of standard); Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period); Does Not Meet Standard (requires corrective action). The audit summary shall indicate, among other things, the number of provisions the facility has achieved at each grade level.

(d) Audit reports shall describe the methodology, sampling sizes, and basis for the auditor's conclusions with regard to each standard provision for each

audited facility, and shall include recommendations for any required corrective action.

(e) Auditors shall redact any personally identifiable inmate or staff information from their reports, but shall provide such information to the agency upon request, and may provide such information to the Department of Justice.

(f) The agency shall ensure that the auditor's final report is published on the agency's Web site if it has one, or is otherwise made readily available to the public.

§ 115.404 Audit corrective action plan.

(a) A finding of ''Does Not Meet Standard'' with one or more standards shall trigger a 180-day corrective action period.

(b) The auditor and the agency shall jointly develop a corrective action plan to achieve compliance.

(c) The auditor shall take necessary and appropriate steps to verify implementation of the corrective action plan, such as reviewing updated policies and procedures or re-inspecting portions of a facility.

(d) After the 180-day corrective action period ends, the auditor shall issue a final determination as to whether the facility has achieved compliance with those standards requiring corrective action.

(e) If the agency does not achieve compliance with each standard, it may (at its discretion and cost) request a subsequent audit once it believes that is has achieved compliance.

§ 115.405 Audit appeals.

(a) An agency may lodge an appeal with the Department of Justice regarding any specific audit finding that it believes to be incorrect. Such appeal must be lodged within 90 days of the auditor's final determination.

(b) If the Department determines that the agency has stated good cause for a re-evaluation, the agency may commission a re-audit by an auditor mutually agreed upon by the Department and the agency. The agency shall bear the costs of this re-audit.

(c) The findings of the re-audit shall be considered final.

Subpart F—State Compliance

§ 115.501 State determination and certification of full compliance.

(a) In determining pursuant to 42 U.S.C. 15607(c)(2) whether the State is in full compliance with the PREA standards, the Governor shall consider the results of the most recent agency audits.

(b) The Governor's certification shall apply to all facilities in the State under the operational control of the State's executive branch, including facilities operated by private entities on behalf of the State's executive branch.

Dated: May 17, 2012.

Eric H. Holder, Jr.,

Attorney General.

[FR Doc. 2012–12427 Filed 6–19–12; 8:45 am]

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Part III

Department of Housing and Urban Development

Delegations of Authority for the Office of Housing—Federal Housing Administration (FHA); Notices

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5557–D–01]

Consolidated Delegation of Authority for the Office of Housing—Federal Housing Administration (FHA)

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of revocation and delegation of authority.

SUMMARY: Section 7(d) of the Department of Housing and Urban Development (HUD) Act, as amended, authorizes the Secretary to delegate functions, powers, and duties as the Secretary deems necessary. In this delegation of authority, the Secretary delegates authority to the Assistant Secretary for Housing—Federal Housing Commissioner, the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner, and the Associate General Deputy Assistant Secretary for Housing, for the administration of certain Office of Housing programs. This delegation revokes and supersedes all prior delegations of authority, including the delegation published on October 12, 2006.

DATES: *Effective Date:* June 5, 2012.

FOR FURTHER INFORMATION CONTACT: Laura M. Marin, Senior Advisor, Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development, 451 Seventh Street SW., Room 9100, Washington, DC 20410; telephone number 202–708–2601. (This is not a toll-free number.) Persons with hearing or speech impairments may call HUD's toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: This notice supersedes the prior consolidated delegation of authority dated September 15, 2006, and published on October 12, 2006 (71 FR 6013). First, the authority previously delegated to the Assistant Secretary for Housing—Federal Housing Commissioner (Assistant Secretary) and General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner (General Deputy Assistant Secretary), with regard to regulation of government-sponsored enterprises (GSEs) under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (FHEFSSA), is no longer included in the delegations to the aforesaid officials. Except for certain fair housing oversight requirements retained by HUD, programmatic regulation of the GSEs was transferred to the Federal Housing Finance Agency by the Housing and Economic Recovery Act of 2008 (Pub. L. 110–289, approved July 30, 2008). The Secretary's authority for those oversight requirements has been delegated in a separate document to the Assistant Secretary for Fair Housing. Second, this delegation has been updated (in sections B through E) to include legislative authority enacted since the 2006 publication of consolidated delegations for the Office of Housing and includes a new overall category for risk management and regulatory functions and authorities. With respect to regulatory authorities, as of July 21, 2011, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, approved July 21, 2010) transferred from the Department of Housing and Urban Development to a new Consumer Financial Protection Bureau, all powers and duties vested in HUD to carry out the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601–2617); the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Title V of Pub. L. 110–289, approved July 30, 2008); and the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 *et seq.*). Nevertheless, HUD may be responsible for certain actions undertaken prior to the transfer date but not completed, or for other residual duties after the transfer of regulatory functions. As a result, this notice contains delegations of authority under the statutes cited above. Finally, the general delegation below includes the position of the Associate General Deputy Assistant Secretary for Housing.

Section A. General Delegation of Authority

Unless otherwise stated, the Assistant Secretary and the General Deputy Assistant Secretary and the Associate General Deputy Assistant Secretary for Housing are each delegated the power and authority of the Secretary of HUD with respect to all housing programs and functions, including, but not limited to, those listed below in Sections B through E, with authority to redelegate to officials of the Department, unless otherwise specified. Except that, the authority to issue rules or regulations to carry out housing programs and to waive regulations is delegated to only the Assistant Secretary, and this authority may not be redelegated.

Section B. Multifamily, Healthcare, and Other Authority Delegated

The authority of the Secretary of HUD with respect to Office of Housing's multifamily housing, healthcare, and certain other programs and functions that are authorized under the following:

(1) Titles I, II, V, VI, VII, VIII, IX, and XI of the National Housing Act (12 U.S.C. 1701 *et seq.*) in exercising the power and authority delegated under this section;

(2) Section 202 of the Housing Act of 1959, as such section existed prior to the enactment of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 1701q note), as amended by section 811 of the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106–561);

(3) Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), as amended by Subtitle A of Title VIII of the National Affordable Housing Act of 1990, with respect to the provision of capital advances and rental housing assistance for supportive housing for the elderly, as amended by Subtitle C of the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106–561);

(4) The Supportive Housing for the Elderly Act of 2010 (Pub. L. 111–372);

(5) Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s), with respect to the Rent Supplement program for disadvantaged persons, including the authority to administer contracts and requirements for rent supplements;

(6) Section 8 Housing assistance under the United States Housing Act of 1937 (42 U.S.C. 1437, *et seq.*), including the authority delegated under Executive Order 11196 to approve the undertaking of any annual contribution, grant, or loan, or any agreement or contract for any annual contribution, grant, or loan;

(7) Section 808 of the National Affordable Housing Act (Pub. L. 101–625), and sections 671, 672, 674, 676, and 677 of the Housing and Community Development Act of 1992 (42 U.S.C. 13631), with respect to the provision of service coordinators in federally assisted housing;

(8) Sections 201, 202, 203, and 204 of the Housing and Community Development Amendments of 1978, and the amendments contained in Title I of the Multifamily Housing Property Disposition Reform Act of 1994 (Pub. L. 103–233, 12 U.S.C. 1701 note);

(9) The Housing Development Grant Program, pursuant to Section 17 of the United States Housing Act of 1937 (42 U.S.C. 1437o);

(10) Section 4(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3533), which provides that the Assistant Secretary is the Assistant to the Secretary who shall be responsible for providing information

and advice to nonprofit organizations desiring to sponsor housing projects assisted under programs administered by the Department;

(11) The authority of the Secretary under the Revolving Fund for Liquidating Programs (12 U.S.C. 1701q) to manage, repair, lease, and otherwise take all actions necessary to protect the financial interest of the Secretary in properties as to which the Secretary is mortgagee-in-possession; and to manage, repair, complete, remodel and convert, administer, dispose of, lease, sell, or exchange for cash or credit at public or private sale; and to pay annual sums in lieu of taxes on, obtain insurance against loss on, and otherwise deal with properties as to which the Secretary has acquired title based on a loan made under the former Section 312 Rehabilitation Loan Program;

(12) The function of the Secretary under Section 7(i)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(i)(3)), concerning the sale, exchange, or lease of real or personal property and the sale or exchange of securities or obligations with respect to any multifamily project;

(13) Title IV of the Housing and Community Development Amendments of 1978 (42 U.S.C. 8001, *et seq.*);

(14) The authority to endorse any checks or drafts in payment of insurance losses on which the United States of America, acting by and through the Secretary or the Secretary's successors or assigns, is a payee (joint or otherwise) in connection with the disposition of the government's interest in property or lease of such property;

(15) Section 2 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701t);

(16) The Multifamily Mortgage Foreclosure Act of 1981 (12 U.S.C. 3701–3717);

(17) The authority to act as an Attesting Officer with authorization to cause the seal of the Department of Housing and Urban Development to be affixed to such documents as may require its application and to certify that a copy of any book, record, paper, microfilm, electronic document, or any other document is a true copy of that in the files of the Department;

(18) The Congregate Housing Services Program under Section 802 of the National Affordable Housing Act (42 U.S.C. 8011);

(19) The HOPE for Homeownership of Multifamily Units Program under Title IV, Subtitle B, of the National Affordable Housing Act (42 U.S.C. 12701, 12871);

(20) The Multifamily Risk Sharing Programs pursuant to Section 542 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, October 28, 1992);

(21) Title II of the Housing and Community Development Act of 1987 (12 U.S.C. 1715 note), and the Emergency Low-Income and Housing Preservation Act of 1987 (ELIHPRA), as each is amended by Subtitle A of Title VI of the National Affordable Housing Act (12 U.S.C. 4101 *et seq.*) and the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRA), as further amended by Title III of the Housing and Community Development Act of 1992 (12 U.S.C. 4141 *et seq.*);

(22) Section 811 of Subtitle B of Title VIII of the National Affordable Housing Act of 1990 (42 U.S.C. 8013), with respect to the provision of capital advances and rental housing assistance for supportive housing for persons with disabilities as amended by Subsection C of Title VIII of the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106–569) and further amended by sections 2 and 3 of the Frank Melville Supportive Housing Investment Act of 2010 (Pub. L. 111–374);

(23) Section 581 of the National Affordable Housing Act of 1990 (Pub. L. 101–625) and Chapter 2, Subtitle C of Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 1190 *et seq.*), relating to the federally assisted low-income housing drug elimination program;

(24) The Portfolio Reengineering Demonstration Program authorized under Sections 211 and 212 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Pub. L. 104–204, 110 Stat. 2874, approved September 26, 1997), as reauthorized and amended by Section 522(b) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (Pub. L. 105–65, 111 Stat. 1344, 1446, approved October 27, 1997) (42 U.S.C. 1437f note); all provisions of the Mark-to-Market Extension Act of 2001 (Title VI of Pub. L. 107–116); and all provisions of the Multifamily Assisted Housing Reform and Affordability Act (MAHRA) (42 U.S.C. 1437f note);

(25) The authority to take actions necessary to ensure that participants in HUD programs under the jurisdiction of the Assistant Secretary for Housing comply with the regulations, rules, and procedures of the Department including, but not limited to, imposing limited denials of participation;

(26) The Rental Assistance Program authorized by Section 236 of the National Housing Act (12 U.S.C. 1715z–1);

(27) The Rural Health Care Capital Access Act of 2006 (Pub. L. 109–240);

(28) The Preservation Approval Process Improvement Act of 2007 (Pub. L. 110–35);

(29) The FHA Loan Limit Adjustment Act of 2003, as contained in Section 302 of Public Law 108–186;

(30) Sections 2832, 2834, and 2835(b) of Title VIII, Subtitle B, of the Housing and Economic Recovery Act of 2008 (Pub. L. 110–289);

(31) The management and disposition of HUD-owned multifamily projects and HUD-held mortgages and the provision of grants and loans, as provided under Section 204(a) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Pub. L. 104–204) (12 U.S.C. 1715z–11a);

(32) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u);

(33) Relating to the Assistant Secretary only, without the power to redelegate, the authority to issue regulations under Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)) and to waive regulations under Section 7(q)(2) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)(2));

(34) The authority to foreclose mortgages, sell foreclosed properties, and modify terms of contract pursuant to Section 7(i) of the Department of Housing and Urban Development Act;

(35) The authority to establish fees and charges pursuant to Section 7(j) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(j));

(36) The authority to accept voluntary services pursuant to Section 7(k) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(k));

(37) The authority to carry out the provisions of the Legacy Act of 2003 (Pub. L. 108–186);

(38) The authority to appoint a Special Assistant for Cooperative Housing pursuant to section 102(h) of the Housing Amendments of 1955 (12 U.S.C. 1715e note); and

(39) The Self-Help Housing Property Disposition Program authorized under the Federal Property and Administrative Services Act of 1949, as amended by Public Law 105–50, approved October 6, 1997 (40 U.S.C. 550(f)).

Section C. Single Family and Other Authority Delegated

(1) The authority of the Secretary of HUD with respect to the Office of

Housing's single-family housing and certain other programs, including regulatory programs, and functions, and the authority with respect to mortgagee activities (including Title I lenders) for single family programs of Titles I, II, V, VI, VIII, and IX of the National Housing Act (12 U.S.C. 1701 *et seq.*);

(2) The HOPE for Homeowners Act of 2008, as contained in Division A, Title IV, of the Housing and Economic Recovery Act of 2008 (Pub. L. 110–289), as amended by section 202 of the Helping Families Save their Homes Act of 2009 (Pub. L. 111–22);

(3) Section 203 of the Helping Families Save their Homes Act of 2009 (Pub. L. 111–22);

(4) The authority to sell, exchange, or lease real or personal property and to sell or exchange securities of obligation with respect to any single-family property pursuant to Section 7(i)(3) of the Department of Housing and Urban Development Act;

(5) The authority to endorse any checks or drafts in payment of insurance losses on which the United States of America, acting by and through the Secretary or his/her successors or assigns, is a payee (joint or otherwise), in connection with the disposition of the government's interest in property or lease of such property;

(6) The authority of the Secretary under the Revolving Fund for Liquidating Programs (12 U.S.C. 1701q) to manage, repair, lease, and otherwise take all actions necessary to protect the financial interest of the Secretary in properties as to which the Secretary is mortgagee-in-possession and to manage, repair, complete, remodel and convert, administer, dispose of, lease, sell, or exchange for cash or credit at public or private sale, pay annual sums in lieu of taxes on, obtain insurance against loss on, and otherwise deal with properties as to which the Secretary has acquired title based on a loan under the former Section 312 Rehabilitation Loan Program;

(7) The Nehemiah Housing Opportunity grant program in Sections 609–613 of the Housing and Community Development Act of 1987 (12 U.S.C. 1715e);

(8) The authority to take actions necessary to ensure that participants in HUD programs comply with regulations, rules, and procedures of the Department including, but not limited to, imposing limited denials of participation;

(9) Relating to the Assistant Secretary only, without the power to redelegate, the authority to issue regulations under Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)) and to waive regulations under Section 7(q)(2) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)(2));

(10) The authority to carry out sections 1451(a) and (b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010;

(11) Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x); and

(12) The authority to implement and administer the Emergency Homeowners' Loan Program within the Emergency Homeowners' Relief Act, as amended (12 U.S.C. 2701 *et seq.*), in cooperation with HUD's Office of Policy Development and Research and HUD's Office of the Chief Financial Officer.

Section D. Financial Operations and Management Controls—Authority Delegated

(1) The authority to provide financial management for programs administered by the Assistant Secretary;

(2) The authority to formulate and develop financial management and internal control policies; to oversee compliance by the Office of Housing and Federal Housing Administration (FHA) with OMB Circulars A–123 (Management and Accountability Control), A–127 (Financial Management Systems), and A–130 (Federal Information Resources) as they apply to Housing and FHA financial and program operations; to establish and supervise the development and execution of uniform Office of Housing and FHA policies, principles, and procedures necessary for financial management; to issue directions that implement these policies and modifications to existing products;

(3) The authority to maintain the FHA General Ledger and the chart of accounts of the FHA funds;

(4) The authority to establish and maintain appropriate financial management controls over Office of Housing and FHA programs; to provide technical guidance to organizational elements under the Assistant Secretary in the field of accounting and fiscal matters; to track Office of Housing and FHA financial activities against the budget and business plan; to coordinate the development and maintenance of integrated financial management systems needed for accounting and management of housing and FHA programs;

(5) The authority to prepare reports; to report to the Assistant Secretary, other offices, the Department's Chief Financial Officer, and HUD regional and field staff on the financial condition of FHA mortgage insurance programs; to publish an annual FHA report reflecting prior year accomplishments and the audited financial statements; and to prepare internal reports on the financial condition of Office of Housing and FHA programs;

(6) The authority to develop and maintain integrated financial management systems, and to direct studies and audits of the accounting and financial information and systems functions;

(7) The authority to prepare and execute policies and systems to measure the financial and actuarial soundness of Office of Housing and FHA programs; and to ensure the conduct of an independent annual audit of the FHA program financial statements;

(8) The authority to obtain reports, information, advice, and assistance in carrying out assigned functions; and to develop financial management information to assist in developing budget, financial, accounting, and cost-accounting information on a timely basis;

(9) The authority to direct the investment of money held in the various Office of Housing/FHA insurance funds that is not needed for current operations, in bonds or other obligations of the United States, or in bonds or other obligations whose principal and interest is guaranteed by the United States; and

(10) The authority to borrow funds from the Department of the Treasury to facilitate credit reform programs.

Section E. Risk Management and Regulatory Functions—Authority Delegated

(1) To establish, impose, and maintain all appropriate risk management policies, activities, and controls for programs carried out by the Assistant Secretary, including analyzing the risk profile of individual programs, carrying out risk management and evaluation functions, performing front-end risk assessments prior to implementation of programs, and implementing the regulatory requirement contained in section 941(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 relating to risk retention regulations;

(2) The Interstate Land Sales Full Disclosure Act, Title XIV of the Housing and Urban Development Act of 1968 (15 U.S.C. 1701, *et seq.*), as proscribed by sections 1062, 1063, and 1064 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111–203);

(3) The Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601, *et seq.*), as proscribed by sections 1062, 1063, and 1064 of the Dodd-Frank Wall

Street Reform and Consumer Protection Act of 2010 (Pub. L. 111–203);

(4) The Secure and Fair Enforcement for Mortgage Licensing Act of 2008, as contained in Division A, Title V, of the Housing and Economic Recovery Act of 2008 (Pub. L. 110–289), and proscribed by sections 1062, 1063, and 1064 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111–203); and

(5) All matters and requirements of the National Manufactured Housing Construction and Safety Standards Act of 1974 and Title VI of the Housing and Community Development Act of 1974 (42 U.S.C. 5401–5426).

Section F. Authority Excepted

Authority excepted from this delegation of authority from the Secretary of Housing and Urban Development to the Assistant Secretary and the General Deputy Assistant Secretary and the Associate General Deputy Assistant Secretary for Housing is the authority to sue and be sued.

Section G. Conclusive Evidence of Authority

The execution of any instrument or document, which purports to relinquish or transfer the Secretary's right to, title to, or interest in, real or personal property, by an employee of the Department of Housing and Urban Development or other official or officials to whom the Secretary's authority under section 204(g) of the National Housing Act is delegated under this notice shall be conclusive evidence of the authority of such employee to act for the Secretary in executing such instrument or document.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 5, 2012.

Shaun Donovan,

Secretary.

[FR Doc. 2012–15064 Filed 6–19–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5557–D–02]

Order of Succession for the Office of Housing

AGENCY: Office of the Assistant Secretary for Housing–Federal Housing Commissioner, HUD.

ACTION: Notice of Order of Succession.

SUMMARY: In this notice, the Acting Assistant Secretary for Housing designates the Order of Succession for the Office of Housing. This Order of Succession supersedes all prior Orders of Succession for the Assistant Secretary for Housing, including that published on October 18, 2006 (71 FR 61500).

DATES: *Effective Date:* June 5, 2012.

FOR FURTHER INFORMATION CONTACT: Laura Marin, Senior Advisor, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 9110, Washington, DC 20410–0500; telephone number 202–402–2689 (this is not a toll-free number). Persons with hearing or speech impairments may call HUD's toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: The Acting Assistant Secretary for Housing for the Department of Housing and Urban Development is issuing this Order of Succession of officials authorized to perform the functions and duties of the Office of Housing when, by reason of absence, disability, or vacancy in office, the Acting Assistant Secretary is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345–3349d). This publication supersedes the Order of Succession notice published on October 18, 2006 (71 FR 61500).

Accordingly, the Acting Assistant Secretary for Housing designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Acting Assistant Secretary for Housing for the Department of Housing and Urban Development is not available to exercise the powers or perform the duties of the Office of the Assistant Secretary for Housing, the following officials within the Office of Housing are hereby designated to exercise the powers and perform the duties of the Acting Assistant Secretary for Housing, including the authority to waive regulations:

(1) Deputy Assistant Secretary for Multifamily Housing;

(2) Deputy Assistant Secretary for Single Family Housing;

(3) Deputy Assistant Secretary for Risk Management and Regulatory Affairs;

(4) General Deputy Assistant Secretary for Housing;

(5) Associate General Deputy Assistant Secretary for Housing;

(6) Deputy Assistant Secretary for Finance and Budget;

(7) Deputy Assistant Secretary for Operations; and

(8) Deputy Assistant Secretary for Healthcare Programs.

These officials shall perform the functions and duties of the office in the order specified herein, and no official shall serve unless all other officials whose position titles precede his/hers in this order are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Superseded

This Order of Succession supersedes all prior Orders of Succession for the Assistant Secretary for Housing, including that published on October 18, 2006 (71 FR 61500).

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 5, 2012.

Carol J. Galante,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2012–15065 Filed 6–19–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5557–D–03]

Delegations of Authority for the Office of Housing—Federal Housing Administration (FHA), Redelegation of Authority to the Deputy Assistant Secretary for Finance and Budget

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of revocation and redelegation of authority.

SUMMARY: On September 15, 2006, the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner issued a comprehensive redelegation of authority to the Deputy Assistant Secretary for the Office of Finance and Budget. This redelegation of authority was published on October 12, 2006. Today's notice, with minor edits, updates and republishes in its entirety the redelegation of authority to Office of Finance and Budget.

DATES: *Effective Date:* June 5, 2012.

FOR FURTHER INFORMATION CONTACT: Office of the Associate General Deputy Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development, 451 Seventh Street SW., Room 9110, Washington, DC 20410–8000, phone 202–708–2601. (This is not

a toll-free number.) Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Section I of this document describes the organization and functions of the Office of Finance and Budget. That organization has not undergone major change since the October 12, 2006 (71 FR 60165), publication of the previous redelegation of authority to Office of Finance and Budget, with the exception that the Office of Evaluation has been moved under the jurisdiction of the Deputy Assistant Secretary for Risk Management and Regulatory Affairs. Therefore this publication does not include the Office of Evaluation within the Finance and Budget Organization.

Section II of this notice describes the authority redelegated to the Deputy Assistant Secretary for Finance and Budget and the Associate Deputy Assistant Secretary for Finance and Budget. With the exception of the addition of the position of Associate Deputy Assistant Secretary for Finance and Budget and certain minor editorial changes, these redelegations remain substantively the same as those published in the October 12, 2006, notice.

Section I. Deputy Assistant Secretary for Finance and Budget: Organization

Three offices report to the Deputy Assistant Secretary for Finance and Budget. These are the (1) Office of Budget and Field Resources; (2) Office of Asset Sales; and (3) Office of the Housing—FHA Comptroller. The following is a brief summary of each of these offices' functions.

A. The Office of Budget and Field Resources

The Office of Budget and Field Resources is responsible for the formulation, presentation, and execution of the Office of Housing's program and administrative budgets. This includes fund assignments and funds control, financial resource management, coordination of financial resources in support of field operations, and budget analysis and reporting. The Office of Budget and Field Resources is responsible for analyzing and evaluating the financial and budgetary impact of new or revised Office of Housing programs and policies, proposed legislation, and new or revised OMB, GAO, or Treasury guidance. Finally, the Director of the Office of Budget and Field Resources is Housing's Funds Control Officer. The responsibilities and duties of personnel within the Office of Budget and Field Resources pertain to internal HUD matters, do not require rendering decisions that bind HUD in relation to external clients and customers and, therefore, do not require delegations of authority.

B. Office of Asset Sales

The Office of Asset Sales oversees the disposition of mortgage notes acquired by Housing upon a default by the mortgagor and assignment of the note to FHA in return for the payment of a claim. The Office of Asset Sales is responsible for the sale of single family, multifamily, nursing home and hospital notes in the manner most advantageous to the federal government and supportive of the mission of the agency. The Office of Asset Sales develops alternative disposition methods that will reduce the acquisition and holding costs of these assets while increasing recovery upon sale.

C. Office of the Housing—FHA Comptroller

The Office of the Housing—FHA Comptroller is a Headquarters operation. The Office of the Housing-FHA Comptroller contains one field component, the Financial Operations Center, located in Albany, New York, and three major offices in Washington, DC

(1) The Office of Financial Service. The Office of Financial Services is comprised of three Headquarters divisions, and one field component, the Financial Operations Center, which is located in Albany, New York. The Office of Financial Services provides the policy direction, review, and coordination required to collect mortgage insurance premiums, to provide the financial services required to support FHA's multibillion dollar Single Family, Multifamily, and Title I insurance portfolios, and to provide the financial support necessary to manage FHA's asset management and disposition programs. The Office of Financial Services collects and maintains financial data necessary to generate accurate accounting entries to the General and Subsidiary ledgers and FHA's financial statements. The Office of Financial Services supports the systems and staff needed to maintain the insurance operations for FHA programs. The Office of Financial Services provides policy guidance and oversight for FHA's debt management and due diligence activities in the Financial Operations Center and supports FHA's asset sales programs. A summary of the functions of each division and of the Financial Operations Center follows:

(a) The Single Family Insurance Operations Division. This Division is responsible for providing financial management services to FHA approved lenders that originate and/or service FHA Single Family insured mortgages. The Single Family Insurance Operations Division maintains insurance records for approximately 32 million active or terminated Single Family FHA-insured loans. The Single Family Insurance Operations Division collects the mortgage insurance premiums and processes refunds of overpayments and unearned mortgage insurance premiums.

(b) The Single Family Post Insurance Division. This Division is responsible for providing processing functions necessary to support the FHA single family asset acquisition, management, and disposition operations. The Single Family Post Insurance Division directs and coordinates all operating requirements, systems development, and reporting functions requirements for its areas of responsibility. The Single Family Post Insurance Division provides servicing support, claims processing, and asset disposition processing. It also provides contractor oversight as appropriate.

(c) The Multifamily Financial Operations Division. This Division is responsible for performing the financial management services necessary for the servicing of all multifamily, insured mortgages in the FHA portfolio and the support of the approved lenders that hold FHA-insured mortgages. The Multifamily Financial Operations Division is also responsible for the servicing of HUD-held Multifamily mortgages and the payment of claims for Multifamily defaulted mortgages. These responsibilities include collection of insurance premiums, management of escrow accounts, payments of preservation and protection expenses, and recording of mortgage satisfactions.

(d) The Financial Operations Center. The Financial Operations Center (Center) is responsible for providing policy guidance, system support, and general oversight of FHA debt management, collection, and due diligence/asset liquidation activities for FHA Assets not elsewhere administered. The Center is responsible for all financial servicing duties in connection with administering the FHA Title I loan program.

(2) The Office of Financial Analysis and Reporting. The Office of Financial Analysis and Reporting is comprised of three Headquarters Divisions. The Office of Financial Analysis and Reporting (OFAR) is responsible for FHA financial management and

reporting as well as providing policy direction, review, and coordination of the budgetary and accounting responsibilities for the Office of Housing-FHA Comptroller. OFAR accumulates, summarizes, and reconciles all of the FHA transactions received from more than 15 subsidiary (feeder) systems that capture the Single Family, Multifamily, HECM and Title I insurance activities. OFAR also is responsible for maintaining FHA's internal control framework as well as monitoring budget execution to ensure obligations and expenditures do not exceed authorized levels. OFAR consolidates all of these activities for presentation in FHA's Annual Management Report. In addition, OFAR oversees cash management functions and FHA investments. A description of the three divisions' functions follows.

(a) Financial Analysis and Controls Division. This Division is responsible for developing financial control procedures, performing financial analysis of accounting information, and monitoring and controlling the FHA budget execution process. It also is responsible for managing subsidy flows and borrowings to include borrowing needs, repayments and interest calculations.

(b) General Ledger Division. This Division is responsible for the preparation of all the cash accounting, proprietary accounting, and budgetary accounting entries that update the FHA general ledger. This includes all daily transactions and adjusting entries at the end of each accounting period, including entries required by Credit Reform and budgetary accounting.

(c) The Financial Reporting Division. This Division is responsible for accounting and financial reporting activities for FHA programs. The division classifies, summarizes, analyzes and reports accounting and budgetary transactions for FHA activities. In addition, the division prepares financial reports as required by the Department of Treasury and the Office of Management and Budget and provides guidance and interpretation of guidelines and standards set forth by the Department of Treasury, the Office of Management and Budget and other government agencies. The Division monitors and prepares responses to financial audits and performs certain liaison functions in connection with program audits. (Audits may be performed by both internal and external agencies.)

(3) Office of Systems and Technology. The Office of Systems and Technology coordinates the development and maintenance of integrated financial and management information systems necessary for accounting and management of the Housing and FHA programs.

Section II. Redelegations to the Office of the Deputy Assistant Secretary for Finance and Budget

The Assistant Secretary for Housing, General Deputy Assistant Secretary for Housing, and the Associate General Deputy Assistant Secretary for Housing redelegate program authority in broad terms to the Deputy Assistant Secretary for Finance and Budget and the Associate Deputy Assistant Secretary for Finance and Budget. In addition, the Housing-FHA Comptroller, who reports to the Deputy Assistant Secretary for Finance and Budget, is redelegated concurrent authority, with that of the Deputy Assistant Secretary for Finance and Budget and the Associate Deputy Assistant Secretary for Finance and Budget, to oversee the FHA financial operations and other Office of Housing activities. The general functions and a brief description of the authority redelegated are as follows:

A. General Authority

Authority is redelegated to the Deputy Assistant Secretary for Finance and Budget and to the Associate Deputy Assistant Secretary for Finance and Budget to sign any and all documents necessary to carry out the business of the Office of Finance and Budget, including oversight of FHA financial operations. In addition, authority is redelegated to the Housing-FHA Comptroller to sign any and all documents necessary to carry out the oversight of FHA financial operations. In concert with the specific authorities redelegated to each of them, the Deputy Assistant Secretary for Finance and Budget, the Associate Deputy Assistant Secretary for Finance and Budget and the Housing-FHA Comptroller, in considering a transaction, are also redelegated authority to waive any directives not mandated by statute or regulation, for good cause and with a written justification.

B. Oversight of Financial Operations

The Deputy Assistant Secretary for Finance and Budget and the Associate Deputy Assistant Secretary for Finance and Budget are redelegated such authority as is necessary to oversee the financial management and operations of Office of Housing programs. The FHA Comptroller, who reports to the Deputy Assistant Secretary for Finance and Budget, is responsible for overseeing the financial operations of the FHA.

C. Investment of Surplus Funds

The Deputy Assistant Secretary for Finance and Budget and the Associate Deputy Assistant Secretary for Finance and Budget are redelegated authority to invest FHA funds in certain specified types of accounts, e.g., U.S. Treasury securities.

D. Borrowing from the U.S. Treasury

The Deputy Assistant Secretary for Finance and Budget and the Associate Deputy Assistant Secretary for Finance and Budget are redelegated authority to borrow from the U.S. Treasury such funds as necessary to maintain a positive cash flow in the various FHA insurance funds.

E. Administration of the FHA Title I Loans

The Deputy Assistant Secretary for Finance and Budget and the Associate Deputy Assistant Secretary for Finance and Budget are redelegated the authority to perform such duties as are necessary to carry out the financial functions of the FHA Title I Program.

F. Administration of the FHA Title II Insured Loans

The Deputy Assistant Secretary for Finance and Budget and the Associate Deputy Assistant Secretary for Finance and Budget are redelegated the authority to perform such actions as may be necessary to carry out the financial functions of all FHA Title II insured loans.

G. Payment of FHA Claims

The Deputy Assistant Secretary for Finance and Budget and the Associate Deputy Assistant Secretary for Finance and Budget are redelegated such authority to perform such actions as may be necessary to make FHA claim payments. These duties include but are not limited to determining the appropriate amount of benefits to be paid, making appropriate certifications for payments issued in debentures and/or cash, extending requisite time periods for a lender's submission of financial claim documentation, and collecting, through administrative offset, any indebtedness due HUD.

H. Servicing of HUD-Held Loans

The Deputy Assistant Secretary for Finance and Budget and the Associate Deputy Assistant Secretary for Finance and Budget are redelegated the authority to perform such duties as are necessary to carry out the financial responsibilities for HUD-held notes and properties including but not limited to collecting mortgage payments, ensuring the protection and preservation of

collateral, establishing and directing the use of funds in escrow accounts, and executing appropriate legal documents upon payment-in-full of a mortgage.

I. Liaison With the U.S. Treasury Department

The Deputy Assistant Secretary for Finance and Budget and the Associate Deputy Assistant Secretary for Finance and Budget are redelegated such authority as is necessary to process and effect such transactions with the U.S. Treasury as may be required in the normal operation of FHA operations.

J. Sale of Secretary-Held Mortgages

The Deputy Assistant Secretary for Finance and Budget and the Associate Deputy Assistant Secretary for Finance and Budget are redelegated such authority as is necessary to sell Secretary-held mortgages.

K. Management of HUD-Held Mortgages, Notes, and HUD-Owned Properties

The Deputy Assistant Secretary for Finance and Budget and the Associate Deputy Assistant Secretary for Finance and Budget are redelegated such authority as is necessary to make disbursements on HUD-owned or managed properties for the payment of property-related expenses, including property taxes, utility bills, property management fees, etc.

L. Source Selection Official

The Deputy Assistant Secretary for Finance and Budget and the Associate Deputy Assistant Secretary for Finance and Budget are redelegated authority to perform all functions of a source selection official.

Section III. Further Redelegations

The authority redelegated by the Assistant Secretary for Housing-Federal Housing Commissioner, the General Deputy Assistant Secretary-Deputy Federal Housing Commissioner and the Associate General Deputy Assistant Secretary for Housing to the Deputy Assistant Secretary for Finance and Budget and the Associate Deputy Assistant Secretary for Finance and Budget may be redelegated. The Housing-FHA Comptroller may not redelegate the authority redelegated herein.

Section IV. Authority Excepted

The authority redelegated in Section II does not include the authority to issue or waive regulations under the program jurisdiction of the Assistant Secretary for Housing.

Section V. Revocation of Delegations

The Assistant Secretary for Housing-Federal Housing Commissioner or the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner or the Associate General Deputy Assistant Secretary for Housing may, at any time, revoke any of the authority redelegated herein. Notice of any revocation will be published in the **Federal Register**. This redelegation of authority supersedes all prior redelegations of authority to staff in the Office of Finance and Budget.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 5, 2012.

Carol J. Galante,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2012–15067 Filed 6–19–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5557–D–04]

Delegations of Authority for the Office of Housing—Federal Housing Administration (FHA); Redelegations of Authority to Other HUD Offices

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of redelegations of authority.

SUMMARY: This notice updates the notice of redelegations of authority published on October 12, 2006, by the Assistant Secretary for Housing Federal Housing Commissioner to HUD officials in HUD offices other than the Office of Housing.

DATES: *Effective Date:* June 5, 2012.

FOR FURTHER INFORMATION CONTACT: Office of the Associate General Deputy Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development, 451 Seventh Street SW., Room 9110, Washington, DC 20410–8000, phone 202–708–2601. (This is not a toll-free number.) Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Housing legislation and programs are implemented and administered by the Office of Housing. However, in some instances, the nature of a statute or program, or component thereof, requires another HUD office to conduct the program or participate in its administration. On October 12, 2006 (71 FR 60168), the Assistant Secretary for Housing—Federal Housing Commissioner (Assistant Secretary for Housing) redelegated certain authority to the Office of Fair Housing and Equal Opportunity (FHEO) and the Office of the General Counsel (General Counsel) and revoked all prior redelegations from the Assistant Secretary for Housing to these HUD offices.

The October 12, 2006, publication also reiterated and updated the authority previously redelegated to the General Counsel. (That previous notice of redelegation of authority was published on March 12, 2004 (69 FR 11880).

Today's notice reaffirms the authority previously redelegated by the Assistant Secretary for Housing to the General Counsel. Please note that the redelegation of authority to the General Counsel does not affect the authority of the Mortgagee Review Board, described in 24 CFR 30.35, or of the Assistant Secretary for Housing to initiate civil money penalty actions.

In addition, today's notice revokes authority previously redelegated by the Assistant Secretary for Housing to the Assistant Secretary for Fair Housing and Equal Opportunity. Previously, certain programmatic regulation authorities exercised by the Secretary of HUD over the Government Sponsored Enterprises (GSEs) pursuant to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA), 12 U.S.C 4501 *et seq.,* had been delegated to the Assistant Secretary for Housing. Certain of these oversight requirements involving affordable housing goals were implemented by the Office of Housing; certain other oversight requirements involving fair housing performance by the GSEs were implemented by the Office of Fair Housing and Equal Opportunity (FHEO) pursuant to a redelegation to that office by the Assistant Secretary for Housing. At this time, regulatory authority over the GSEs has been vested in the Federal Housing Finance Agency pursuant to the Housing and Economic Recovery Act of 2008 (Pub. L. 110–289, approved July 30, 2008) except for certain fair housing requirements which fall wholly within the purview of the Office of Fair Housing and Equal Opportunity. Therefore, this notice revokes the previous October 2006 redelegation of authority from the Assistant Secretary for Housing to the Assistant Secretary for Fair Housing and Equal Opportunity. By separate notice HUD will publish a

delegation from the Secretary of HUD to the Assistant Secretary for Fair Housing and Equal Opportunity for these residual oversight activities.

II. Authority Revoked

The Assistant Secretary for Housing and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner (General Deputy Assistant Secretary for Housing) and the Associate General Deputy Assistant Secretary for Housing revoke the previous redelegation of authority to the Assistant Secretary for Fair Housing and Equal Opportunity.

III. Authority Redelegated

Authority is redelegated to the General Counsel to issue a notice of violation under the terms of a regulatory agreement and a notice of default under the terms of a section 8 housing assistance payments contract, Rental Assistance Payment Contract, Project Rental Assistance Contract or Use Agreement, and to take all actions permitted under 24 CFR 30.36, 24 CFR 30.45, and 24 CFR 30.68.

IV. Authority Excepted

The authority redelegated in Section III does not include the authority to waive regulations under the program jurisdiction of the Assistant Secretary for Housing.

V. Further Redelegations

The General Counsel is authorized to redelegate the authority redelegated in Section III, above. This notice has no impact upon the redelegation of authority issued by the General Counsel to the Departmental Enforcement Center on July 18, 2011 (76 FR 42463).

VI. Prior Redelegations Superseded

The previous redelegations of authority to the Assistant Secretary for Fair Housing and Equal Opportunity and the General Counsel, published on October 12, 2006 are superseded by this notice.

VII. Revocation of Authority

The Assistant Secretary for Housing—Federal Housing Commissioner, General Deputy Assistant Secretary for Housing or Associate General Deputy Assistant Secretary for Housing may revoke the authority authorized herein, in whole or part, at any time. Any revocation or modification of a redelegation will be published in the **Federal Register**.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 5, 2012.

Carol J. Galante,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2012–15069 Filed 6–19–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5557–D–05]

Delegations of Authority for the Office of Housing—Federal Housing Administration (FHA); Redelegations of Authority Regarding Multifamily Housing Programs

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of revocation and redelegation of authority.

SUMMARY: On October 12, 2006, the Assistant Secretary for Housing—Federal Housing Commissioner published comprehensive redelegations of authority for the Office of Multifamily Housing Programs and the Office of Insured Health Care Facilities (OIHCF). Today's notice of redelegations of authority updates and amends the notice that was published on October 12, 2006. The notice reflects changes that have been made to the redelegations of authority regarding multifamily housing programs since October 12, 2006. In general, these changes reflect (1) the inclusion of the Office of Affordable Housing Preservation and its functions in the Office of Multifamily Housing Programs and (2) the deletion of certain redelegations for healthcare facility programs and functions, which now are contained in a separate Office of Healthcare Programs and are subject to their own redelegations to be published in a separate notice.

DATES: *Effective Date:* June 5, 2012.

FOR FURTHER INFORMATION CONTACT: Janet Golrick, Associate Deputy Assistant Secretary for the Office of Multifamily Housing, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6112, Washington, DC 20410–8000, telephone 202–708–2495. (This is not a toll-free number.) Persons with hearing- or speech-impairments may access this number through TTY number by calling the toll-free Federal Relay Service number at 800–877–8339.

SUPPLEMENTARY INFORMATION: Several important changes are included in today's notice. First, specific redelegations of authority for functions performed by the Office of Affordable Housing Programs (OAHP) are contained in Section VII. Previously, redelegations of authority for OAHP were published separately from those for the Office of Multifamily Housing Programs, and the last publication was on October 12, 2006 (71 FR 60178). Those authorities have been updated but not functionally amended and are reproduced in their entirety in today's notice with one addition that is noted below. OAHP has now been merged into the Office of Multifamily Housing Programs, and the position of OAHP Deputy Assistant Secretary has been changed to OAHP Associate Deputy Assistant Secretary. As a result, previous redelegations to the OAHP Deputy Assistant Secretary (and the OAHP Associate Deputy Assistant Secretary) now run to the Deputy Assistant Secretary for Multifamily Housing Programs and the Associate Deputy Assistant Secretary for Affordable Housing Programs.

Second, the Assistant Secretary is now redelegating authority to the Deputy Assistant Secretary for Multifamily Housing Programs and the Associate Deputy Assistant Secretary for Affordable Housing Programs authority to perform all the functions necessary to implement Title XII of Division A of the American Recovery and Reinvestment Act of 2009 (ARRA), (Pub. L. 111–5, approved February 17, 2009). ARRA created a program for making energy improvements in multifamily housing known as the Green Retrofit Program for Multifamily Housing.

Third, today's notice does not contain certain redelegations for HUD's healthcare programs, except in connection with property disposition activities for section 232 healthcare facilities and section 242 hospitals. All other functions for sections 232 and 242 have been consolidated in the Office of Healthcare Programs.

Fourth, today's notice contains a redelegation to the Deputy Assistant Secretary for Multifamily Housing Programs and the Associate Deputy Assistant Secretary for Multifamily Housing Programs to carry out activities under the Self-Help Housing Property Disposition Program authorized under the Federal Property and Administrative Services Act of 1949, as amended by Public Law 105–50 (40 U.S.C. 550(f)). This delegation of authority previously was published on March 16, 2004 and is incorporated here.

Fifth, a new position, the Associate Deputy Assistant Secretary for Multifamily Housing Administration, is included in the description of the Office

of Multifamily Housing Programs in Section I.

Finally, Section III.F., function (2), continues to indicate that Hub Operations Officers and Program Center Directors can issue a firm commitment for mortgage insurance if the principal amount of the mortgage does not exceed $15 million. The Hub Director can issue a firm commitment for mortgage insurance without any limitation related to the principal amount of the mortgage but such loans may be subject to HUB or National Loan Committee approval before either an application invitation letter or a firm commitment can be issued, depending on program type, project size, loan size, and real estate risk, in accordance with Notice H 2011–04 or its successors.

Section I. Multifamily Housing Programs: Office of Housing Organization

A. Office of Multifamily Housing Programs—Headquarters

In general, all Office of Multifamily Housing managers in Headquarters and in the Field report to the Deputy Assistant Secretary for Multifamily Housing Programs and to their appropriate program Associate Deputy Assistant Secretary (i.e., the Associate Deputy Assistant Secretary for Multifamily Housing Programs or the Associate Deputy Assistant Secretary for Affordable Housing Programs) and, for internal administrative matters only, to the Associate Deputy Assistant Secretary for Multifamily Administration. In Headquarters, there are six major Multifamily Housing program offices, each of which is headed by an Associate Deputy Assistant Secretary or a Director. These offices and a general description of each appear below:

1. Office of Multifamily Housing Development

This office develops and implements policies and guidelines for the loan origination aspects of FHA multifamily housing mortgage insurance programs from pre-application to final endorsement of the mortgage note. The office is responsible for Traditional Application Processing (TAP), Multifamily Accelerated Processing (MAP) and Section 542 Risk-Sharing policies and procedures, including lender approval and lender monitoring. The Office of Multifamily Housing Development staff provides technical guidance to the HUD/FHA multifamily housing field staff, the industry, and other Headquarters offices.

2. Office of Asset Management

The Office of Asset Management (Office of AM) is responsible for strategic planning, guidance, and oversight of HUD's multifamily housing portfolio of project assets after development and upon occupancy (multifamily housing properties consist primarily of rental housing properties with five or more dwelling units, such as apartments or town houses, elderly housing, housing for persons with disabilities, mobile home parks, retirement service centers and, very occasionally, vacant land). The Office of AM develops policy for, and oversees, field office asset management operations. The Office of AM is responsible for oversight of regulated property ownership and management, routine mortgage servicing, default servicing, acquisition and/or disposition of loans and properties, and management of properties where the Secretary is owner or mortgagee-in-possession. The Office of AM serves as Multifamily Housing's liaison with the Real Estate Assessment Center (REAC) and the Departmental Enforcement Center (DEC). In addition, the Office of AM oversees field office and lender-servicing activities for HUD-involved properties. Through two field Property Disposition Centers, the Office of AM oversees HUD management, ownership, and the sale of properties, which HUD owns by virtue of default and foreclosure, or for which HUD is mortgagee-in-possession. The Office and the Centers also oversee and implement property disposition functions for the Office of Healthcare Programs.

3. Office of Housing Assistance and Grant Administration

The Office of Housing Assistance and Grant Administration is responsible for directing and overseeing housing assistance and competitive grant programs administered by the Office of Multifamily Housing Programs, and places its primary focus on production and development functions. Its programs include project-based Section 8 housing assistance, the Section 202/811 Capital Advance Program, the Emergency Capital Repair Grants program, Service Coordinators, Assisted Living Conversion, and Congregate Housing Services Programs. The Office also is involved with other project based assistance programs including Rent Supplement, Rental Assistance Payments, Project Rental Assistance Contracts, and Senior Project Rental Assistance Contracts. In addition, the Office provides occupancy policy guidance and supports the Rental Housing Integrity Improvement Initiative and Enterprise Income Verification in connection with HUD efforts to reduce improper payments.

4. Office of Housing Assistance Contract Administration Oversight

The Office of Housing Assistance Contract Administration Oversight is responsible for policies, procedures, guidelines, performance assessment, and technical and general compliance under the terms of the respective Annual Contributions Contracts for Section 8 Contract Administrators (CA). The Section 8 contract administration oversight by this office provides that properties continue to meet the Department's standard of providing decent, safe, and sanitary housing to low-income families. Additionally, the Office of Housing Assistance Contract Administration Oversight is responsible for assuring that the Department meets its financial obligations to owners as specified in the various subsidy contracts by ensuring availability of subsidy payments. The office oversees ongoing funding of project-based assistance contracts, including contracts under the Section 8, Rent Supplement, and Rental Assistance Payments programs.

5. Office of Program Systems Management

The Office of Program Systems Management is responsible for the automated systems that support multifamily housing programs and healthcare programs. This office works with the offices to develop and enhance the systems used to support their respective programs.

6. Office of Affordable Housing Preservation

The Office of Affordable Housing Preservation (OAHP) was established to administer the Mark to Market program, to assure the smooth continuation of the Mark to Market program utilizing authorities that continued after the legislative sunset of the Office of Multifamily Housing Assistance Restructuring on September 30, 2004. OAHP also provides assistance to affordable housing areas in the oversight and preservation of a wide spectrum of affordable housing programs, including making energy improvements to multifamily housing. OAHP's duties include those needed to support Multifamily Development and Asset Management, as may be assigned by the Deputy Assistant Secretary for Multifamily Housing Programs. The Office is headed by an Associate Deputy Assistant Secretary and a Deputy

Associate Deputy Assistant Secretary. OAHP is headquartered in Washington, DC and has a limited field presence with two field offices: one in Washington, DC, and one in Chicago, Illinois. There also is OAHP staff out-stationed in New York City. Redelegations of authority to the Deputy Assistant Secretary for Multifamily Housing Programs and the Associate Deputy Assistant Secretary for the Office of Affordable Housing Preservation are set forth in Section VII of the notice.

B. Office of Multifamily Housing—Field Office Structure

The field office organization consists of 51 offices, including Hubs and program centers. In all, there are 17 Hubs, most of which also have a Program Center sometimes (referred to as Projects Management Staff) co-located with the Hub. In a few instances where a Hub does not have a Program Center, it may have an office outside the Hub, comprised of out-stationed staff, that serves a specific geographic area. Each Program Center or office administers programs for the immediate geographical area of the Hub, whereas the Hub oversees operations for the broader geographic area. There are 34 Program Centers, each of which reports to a Hub and is located within the Hub's jurisdiction.

The highest-ranking official in a Hub is the Hub Director. The immediate deputy of the Hub Director is the Director of the Operations Staff (referred to in this notice as the Operations Officer). The Director of the Projects Management Staff (referred to in this notice as the Director of Project Management) reports to the Hub Director and oversees the work of the co-located Program Center. The head of a Program Center who is located outside the Hub is the Program Center Director. The occupant of this position also reports to the Hub Director. (Note: In this notice, reference to ''Program Center Directors'' refers to both the aforementioned Director of Projects Management and the Directors of Program Centers located outside the Hub location).

The chart below identifies each Hub, the Program Centers that report to it, and the geographic area that it serves.

MULTIFAMILY HOUSING HUB STRUCTURE

Hub	Program center	Geographic area serviced
Atlanta	Caribbean, Knoxville, Louisville, Nashville (Also, a Multifamily Property Disposition Center is located in Atlanta).	Georgia, Kentucky, Puerto Rico, Tennessee, Virgin Islands.
Baltimore	Richmond, Washington, DC	Maryland, Virginia, Washington, DC.
Boston	Hartford, Manchester, Providence	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.
Chicago	Indianapolis	Illinois, Indiana.
Columbus	Cleveland	Ohio.
Denver		Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.
Detroit		Michigan.
Fort Worth	Albuquerque, Houston, Little Rock, New Orleans, San Antonio (Also, a Multifamily Property Disposition Center is located in Fort Worth).	Arkansas, Louisiana, New Mexico, Texas.
Greensboro	Columbia	North Carolina, South Carolina.
Jacksonville	Birmingham, Miami, Jackson	Florida, Alabama, Mississippi.
Kansas City	Des Moines, Oklahoma City, Omaha, St. Louis	Iowa, Kansas, Missouri, Nebraska, Oklahoma.
Los Angeles		Southern California.
Minneapolis	Milwaukee	Minnesota, Wisconsin.
New York City	Buffalo	New York State, including New York City Metro Area.
Philadelphia	Charleston, Newark, Pittsburgh	Delaware, New Jersey, Pennsylvania, West Virginia.
San Francisco	Honolulu, Phoenix, Las Vegas	Arizona, Northern California, Hawaii, Nevada.
Seattle	Anchorage, Portland	Alaska, Idaho, Oregon, Washington.

In summary, certain Multifamily Housing Office managers in Program Centers, Hubs, and Headquarters, acting within the scope of their redelegated authorities and applicable law, have independent authority, through the delegation process, to make binding decisions on behalf of the Department. Program Center Directors report to Hub Directors who, in turn, report to the Deputy Assistant Secretary for Multifamily Housing Programs and the Associate Deputy Assistant Secretary for Multifamily Housing Programs.

Section II. Multifamily Housing Programs—Functions

The Office of Multifamily Housing is charged with carrying out duties of the Assistant Secretary for Housing, the General Deputy Assistant Secretary for Housing, and the Associate General Deputy Assistant Secretary for Housing as they relate to multifamily programs set forth in HUD's governing legislation. This broad range of programs enables HUD, in concert with its partners from the private and public sectors, to provide safe, decent, and affordable multifamily housing to millions of American families. The programs include mortgage insurance, capital advances, grant programs, and some programs that assist communities in reducing crime. Under this delegation, the Assistant Secretary for Housing, General Deputy Assistant Secretary for Housing and the Associate General Deputy Assistant Secretary for Housing redelegate broad program authority to the Deputy Assistant Secretary for Multifamily Housing and the Associate Deputy Assistant Secretary for Multifamily Housing, for particular Multifamily Housing Directors in Headquarters and the field.

Characterizing the authority that is being redelegated in broad or general terms in this Section II will enable the Deputy Assistant Secretary for Multifamily Housing and the Associate Deputy Assistant Secretary for Multifamily Housing and particular Multifamily Housing Directors to perform all functions necessary to accomplish multifamily housing program tasks and objectives.

In some past delegation notices, HUD has set forth, in ''laundry list'' fashion, the functions that are carried out by managers under generic function headings. However, publishing detailed lists has proven problematic, as some

listed items become obsolete over time, while others are omitted through oversight. Conversely, this Section II of this delegation sets forth functions in general terms, while the preamble provides insights into the nature of the work performed by managers with delegated authority under each category. The basic multifamily housing functions and a brief description of each are as follows:

A. General Authority

This authority allows Office of Housing officials in the Office of Multifamily Housing to sign any and all documents necessary to carry out business within their program and geographic jurisdictions. In addition, this authority allows such officials, when considering a proposal, to waive any directives, not mandated by statute or regulation or reserved to Headquarters, for good cause and with written justification.

B. Development

This function allows a manager with delegated authority to make all necessary determinations that relate to the FHA-insured mortgage underwriting process and the risk-sharing programs. Essentially, this category of functions begins with a pre-application or application for mortgage insurance and ends with the Department's endorsement of an insured mortgage and related documentation. For all mortgage insurance programs, it includes, but is not limited to, such activities as determining the acceptability of project sites; issuing firm commitments for FHA insurance; issuing initial or final endorsements for FHA insurance; executing regulatory agreements; requiring corrective actions and escrow accounts as needed; and wherever applicable, directing the actions of HUD clients in connection with a project's development (e.g., authorizing a housing finance agency to process- risk sharing loans or to conduct a subsidy layering review). Similar production functions are performed in connection with capital advances for elderly persons (the Section 202 program) and persons with disabilities (Section 811). For example, under those programs, applications are reviewed and rated, funding awards are made, regulatory and use agreements executed.

C. Asset Management

Functions carried out under this category involve HUD's continuing relationship with a multifamily project after it has been added to the HUD portfolio through either FHA mortgage insurance, co-insurance, or risk-sharing programs; direct loan; capital advance or grant programs; other subsidy programs; and combinations thereof. Under this category, ongoing decision-making relates to an insured or subsidized project's occupancy, operations, and physical and financial condition from the time of occupancy through final disposition including, but not limited to, prepayment, repayment of the loan or end of the subsidy contract, foreclosure, and/or termination of the subsidy contract. In addition, functions involve the renewal of Section 8 contracts and other project-based assistance, and imposing sanctions upon project owners that, for example, violate the terms of their regulatory agreement and/or section 8 housing assistance contract.

D. Competitive Capital Advance Programs

Competitive programs within the Office of Multifamily Housing typically include those for the Section 202 supportive housing for the elderly, Section 811 supportive housing for persons with disabilities, service coordinators, and the assisted living conversion programs. In any given year, Congress may authorize additional or alternative programs. Office functions include developing the criteria for applications, rating and ranking applications, and executing capital advance and grant agreements. Once a grant is awarded, functions include monitoring compliance with the grant agreement, terminating a grant for non-compliance, modifying a grant, and closing out a grant. Once a capital advance is awarded under the Section 202 or Section 811 programs, functions include processing a firm commitment application, initially closing the project, monitoring compliance with the construction contract, and finally closing the project as soon as costs have been certified.

E. Program Demonstrations

Periodically, Congress will enact legislation that authorizes HUD to conduct a multifamily housing program on a demonstration basis. The purpose of a demonstration is essentially to test the viability of a new program on a limited basis, e.g., by geography, case volume, or time. Functions related to demonstration programs include developing program criteria, implementing the program, monitoring activities and results, preparing any required reports to Congress, and closing out the program.

F. Property Disposition

Property disposition functions begin after HUD has made an initial decision to foreclose on a property. These functions include notifying an owner, and hearing and deciding an owner's appeal to the foreclosure determination; deciding the terms of and directing a foreclosure sale; accepting a deed-in-lieu of foreclosure, authorizing any work and related terms required by a project in advance of a sale; advertising a project for sale; approving disposition plans, sales documents, and purchasers; executing rental assistance contracts; and relocation of residents as may be necessary.

G. Coinsurance

In 1990, HUD stopped accepting new applications for multifamily housing coinsurance. However, HUD still carries out multifamily housing coinsurance program functions in relation to the existing inventory, which include any and all actions necessary to carry out the program authorized under 12 U.S.C. 1715z–9. Functions also include authorizing second mortgage documents in partial payment-of-claims cases, as well as approving requests for the conversion of coinsurance to full mortgage insurance.

H. Portfolio Reengineering

The Portfolio Reengineering Demonstration Project was originally authorized in 1996 and most recently in 1998 under Title V of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (Pub. L. 105–65). Although all cases under the program have been closed, there is ongoing asset management functions related to this portfolio of projects.

I. Contract Administration Oversight/ Funding

Functions in this area of contract administration oversight involve activities related to the award of the Contract Administration Contracts (Annual Contribution Contracts), assessment and assignment of Section 8 contracts to Performance-Based Contract Administrators (PBCAs), evaluation of PBCA performance, provision of technical assistance to PBCAs, and prescription of any remedial actions needed to improve PBCA performance. Key functions also involve developing policies and procedures for field offices and coordinating efforts between the PBCAs and the local Multifamily Housing field office staff; monitoring, evaluating, and providing technical guidance relative to field activities;

assuring that PBCAs provide data needed to evaluate their performance and the status of contracts they administer; and coordinating audit activities associated with Section 8 Contract Administration.

Funding activities involve budget and funding responsibilities associated with various rental assistance programs, including both HUD and third-party administered contracts. Activities also include creating and approving administrative commitments for active contracts, determinations of funding levels, reservations of the subsidy based on funding availability, monitoring allotments as compared to annual appropriations, funding assignments against allotments, reservations compared to fund assignments, and actual reservations versus estimated activity. Additional functions include monitoring the timely payment of Section 8 housing assistance to administrators and project owners in cooperation with the accounting staff in the Office of the Chief Financial Officer. The funding area also works with the Department's budget and accounting organizations to generate budget authority estimates for the above-referenced subsidy programs, develop procedures for funding and payment processes, and integrate systems to support the data.

Section III. Multifamily Housing Programs—Authority Redelegated

The Assistant Secretary, the General Deputy Assistant Secretary and the Associate General Deputy Assistant Secretary for Housing retain and redelegate the power and authority, as provided in this Section III, (1) To the Deputy Assistant Secretary for Multifamily Housing Programs and the Associate Deputy Assistant Secretary for Multifamily Housing Programs; (2) through the above Deputy Assistant Secretary and Associate Deputy Assistant Secretary, to the Headquarters Multifamily Directors listed below; and (3) through the Headquarters Multifamily Directors, to the Headquarters and Field Office managers listed below; the following power and authority.

A. Deputy Assistant Secretary and Associate Deputy Assistant Secretary for Multifamily Housing Programs

Authority is redelegated, on a nationwide basis, to take all actions necessary to conduct all multifamily housing programs, including, but not limited to, the exercise of the following functions:

(1) The general power to modify and sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by a statute or regulation;

(2) All production functions related to mortgage insurance, capital advance, risk-sharing, or other programs;

(3) All asset management functions related to mortgage insurance, grant, or other programs;

(4) All functions necessary to carry out a competitive capital advance program;

(5) All functions necessary to carry out a program conducted on a demonstration basis;

(6) All property disposition functions;

(7) All functions necessary to the conduct of the Multifamily coinsurance program;

(8) All functions necessary to conduct asset management activities under the portfolio reengineering program, re-authorized under Title V of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1998 (Pub. L. 106–65);

(9) All functions necessary to the conduct of Section 8 contract administration oversight/funding;

(10) All functions necessary to carry out the Self-Help Housing Property Disposition Program; and,

(11) All source selection official functions.

B. Director, Office of Multifamily Housing Development

Authority is redelegated, on a nationwide basis, to take all actions necessary to conduct all multifamily housing programs, in relation to the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by a statute or regulation;

(2) All production functions related to mortgage insurance or risk-sharing programs; and

(3) All functions necessary to carry out a program conducted on a demonstration basis.

C. Director, Office of Asset Management

Authority is redelegated, on a nationwide basis, to take all actions necessary to conduct all multifamily housing programs, in relation to the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by a statute or regulation;

(2) All asset management functions related to mortgage insurance, loans, capital advances, or grants or other programs, except functions related to the renewal of Section 8 contracts and other project-based assistance;

(3) All functions necessary to carry out a competitive capital advance programs;

(4) All functions necessary to carry out a program conducted on a demonstration basis;

(5) All property disposition functions;

(6) All functions necessary to conduct the multifamily coinsurance program; and

(7) All functions necessary to conduct the portfolio reengineering program, re-authorized under Title V of the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1998.

D. Director, Office of Housing Assistance and Grant Administration

Authority is redelegated, on a nationwide basis, to take all actions necessary to conduct:

(1) The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by a statute or regulation;

(2) All functions necessary to carry out competitive capital advance programs; and

(3) Only asset management functions related to the renewal of Section 8 contracts and other project-based assistance.

E. Director, Office of Housing Assistance Contract Administration Oversight

Authority is redelegated, on a nationwide basis, to take all actions necessary to conduct the business of Section 8 contract administration and funding rental assistance programs as designated in Section II, in relation to the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions and waive any directive that is not mandated by a statute or regulation; and

(2) All functions related to Section 8 Contract Administration and funding.

F. All Hub Directors, Operations Officers, and Program Center Directors

The authority redelegated authorizes these officials to take all actions necessary to the conduct of all multifamily housing programs, not including the property disposition program, coinsurance program, and portfolio reengineering program. The authority is further limited in that it may only be exercised within each official's authorized geographic jurisdiction. Accordingly, the Hub

Directors and Operations Officers may exercise the functions enumerated herein with the full geographic jurisdiction of their respective Hubs, which include all Program Center areas under their respective jurisdictions. The Hub Director for Project Management may only exercise the authority within the immediate ''program center'' jurisdiction of the Hub. The Program Center Director may only exercise authority within the geographic jurisdiction of the Program Center. The authority redelegated permits the exercise of the following functions:

(1) The general power to modify and sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by statute or regulation;

(2) All production functions related to mortgage insurance, grant, or other multifamily housing insurance programs, except that Operations Officers and Program Center Directors cannot issue a firm commitment for mortgage insurance where the principal amount of the mortgage is in excess of $15 million. The Hub Director can issue a firm commitment for mortgage insurance without any limitation related to the principal amount of the mortgage but such loans may be subject to HUB or National Loan Committee approval before either an application invitation letter or a firm commitment can be issued, depending on program type, project size, loan size, and real estate risk, in accordance with Notice H 2011–04 or its successors.

(3) All asset management functions related to mortgage insurance, grant, or other programs, except as follows:

(a) Operations Officers and Program Center Directors cannot issue (i) a notice of violation under the terms of a regulatory agreement or (ii) a notice of default under the terms of a housing assistance contract.

(b) Hub Directors, Operations Officers, and Program Center Directors cannot perform the following functions:

(i) Authorize the acceleration of the principal debt of a mortgage;

(ii) Terminate a rent supplement contract or rental assistance contract;

(iii) Declare a default under an interest reduction payment contract;

(iv) Authorize a partial payment of claim;

(v) Authorize a mortgage modification;

(vi) Authorize the override of a mortgage lockout provision;

(vii) Authorize a prepayment of a HUD-insured or HUD-held mortgage, or voluntary termination of mortgage insurance, unless specifically authorized to do so by an express redelegation of authority from the Assistant Secretary for Housing or the General Deputy Assistant Secretary for Housing, setting forth any affected programs and terms and conditions applicable thereto.

(4) All functions necessary to carry out competitive capital advance programs; and

(5) All functions necessary to carry out a program conducted on a demonstration basis.

(6) Hub Directors, but not Operations Officers and Program Center Directors, are authorized to carry out all source selection official functions for field-office based procurements, provided that the contract amount is less than $10 million.

G. Directors for Property Disposition Centers in the Atlanta, Georgia, and Fort Worth, Texas, Hubs Only

Authority is redelegated, on a nationwide basis, to take all actions and perform all functions, including signing any documents in furtherance thereof and issuing waivers of directives not mandated by statute or regulation, necessary to conduct the multifamily and healthcare property disposition program.

H. Hub Director, Operations Officer, and Program Center Director for the Greensboro, North Carolina, Hub Only

Authority is redelegated, on a nationwide basis, to take all actions and to perform all functions, including signing any documents in furtherance thereof and issuing waivers of directives not mandated by statute or regulation, necessary to the conduct of the multifamily coinsurance program.

I. Hub Directors, Operations Officers, and Directors for Project Management in, New York; Philadelphia, Pennsylvania; Atlanta, Georgia; Jacksonville, Florida; Columbus, Ohio; Fort Worth, Texas; Kansas City, Kansas; Denver, Colorado; San Francisco, California; and Seattle, Washington; and the Program Center Directors in Pittsburgh, Pennsylvania; Cleveland, Ohio; Houston, Texas; and Oklahoma City, Oklahoma

Authority is redelegated, on a nationwide basis, to take all actions and perform all functions, including signing documents in furtherance thereof and issuing waivers of directives not mandated by statute or regulation, necessary to conduct of the portfolio reengineering program authorized under Title V of the Department of Veteran Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (Pub. L. 106–65).

Section IV. Authority Excepted

The authority redelegated in Section III.A. through III.I. does not include authority to issue or waive regulations.

Section V. Further Redelegations

The authority redelegated by the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary—Deputy Federal Housing Commissioner and the Associate General Deputy Assistant Secretary for Housing may not be further redelegated by the officials identified in Sections III.A. through III.I., except that a Hub Director may redelegate to, or withdraw from, any Supervisory Project Manager(s) or Senior Project Managers within his or her geographic jurisdiction, any of the authority delegated those managers under this notice, except the authority to issue waivers, or FHA conditional or firm mortgage insurance commitments, and to endorse FHA notes for insurance. If work is transferred from one Hub to another or work is performed for a Hub by staff from another geographical location, the delegation must also be approved in writing by the Deputy Assistant Secretary or Associate Deputy Assistant Secretary for Multifamily Housing.

The authority specified in Section III. A, item (10) may not be further redelegated by the Deputy Assistant Secretary for Multifamily Housing Programs or the Associate Deputy Assistant Secretary for Multifamily Housing Programs to other officials.

Section VI. Revocation of Delegations

All prior redelegations of authority from the Assistant Secretary to staff in the Office of Multifamily Housing are hereby superseded. The Assistant Secretary for Housing—Federal Housing Commissioner, the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner and the Associate General Deputy Assistant Secretary for Housing may, at any time, revoke any of the authority redelegated in this notice. Notice of any revocation will be published in the **Federal Register**.)

Section VII. Office of Affordable Housing Preservation—Authority Redelegated

A. The Assistant Secretary for Housing, the General Deputy Assistant Secretary for Housing, and the Associate General Deputy Assistant Secretary for Housing, redelegate to the Deputy Assistant Secretary for Multifamily

Housing and the Associate Deputy Assistant Secretary for the Office of Affordable Housing Preservation the following authority:

All authority necessary to carry out the provisions of the Mark-to-Market Program under MAHRA (42 U.S.C. 1437f note), except for the authority to issue and/or waive regulations and to sue and be sued.

B. The Assistant Secretary for Housing, the General Deputy Assistant Secretary for Housing and the Associate General Deputy Assistant Secretary for Housing redelegate to the Deputy Assistant Secretary for Multifamily Housing and the Associate Deputy Assistant Secretary for the Office of Affordable Housing Programs the following authority:

(1) To modify and sign any documents necessary to perform enumerated functions and to waive any directive issued by OAHP that is not mandated by a statute or regulation.

(2) To administer all provisions of MAHRA, including but not limited to the following:

(a) To make eligibility determinations under sections 512 and 516 of MAHRA;

(b) To enter into, modify, and or extend agreements with participating administrative entities under section 513 of MAHRA;

(c) In connection with a restructuring transaction, to make rent and/or mortgage restructuring determinations under sections 514, 515, 517, and 524 of MAHRA; and

(d) To terminate, modify, or affirm any decision on appeal under MAHRA.

(3) In connection with a restructuring transaction, to modify the principal balance, payments, interest rate, and amortization period and other terms of existing FHA-insured and HUD-held mortgages including any HUD or Secretary-held subordinate debt encumbering or otherwise related to a project; and to issue restructuring commitments and closing documents relating to such debt.

(4) To issue HUD forms 92264 and 92264A upon approval of a restructuring plan.

(5) In connection with a restructuring transaction, to approve transfers of physical assets.

(6) In connection with a restructuring transaction, to approve the ''Environmental Assessment and Compliance Findings for the Related Laws and Authorities,'' form HUD 4128.

(7) To issue a commitment to insure and endorse for insurance a mortgage note given to refinance a HUD-insured or HUD-held mortgage, pursuant to section 223(a)(7) of the National Housing Act (12 U.S.C. 1715n).

(8) For qualified nonprofit entities acquiring projects that are the subject of a restructuring transaction, to modify, assign, or forgive debt created in the restructuring.

(9) To administer escrow accounts and modify the agreement established under the restructuring transaction, for the purpose of addressing immediate and near-term rehabilitation needs of a project.

(10) To perform all source selection official duties, subject to laws, regulations, and HUD policies and procedures governing the procurement process.

(11) To administer grant programs, other than selecting a grantee as only the Assistant Secretary is authorized to function as the Grant Official for the Office of Housing.

(12) To perform all functions of a source selection official in relation to a procurement under the subject matter jurisdiction of OAHP.

(13) To approve, in connection with a project's sale or mortgage refinancing, the assumption, modification, and/or subordination of mortgage restructuring notes and contingent repayment notes previously created during a debt restructuring transaction.

(14) To perform all the functions necessary to implement Title XII of Division A of the American Recovery and Reinvestment Act of 2009, P.L. 111–5 (the ''Recovery Act''), in the section titled ''Assisted Housing Stability and Energy and Green Retrofit Investments'' under ''Housing Programs'', generally known as the Green Retrofit Program for Multifamily Housing.

C. The Deputy Assistant Secretary for Multifamily Housing and the Associate Deputy Assistant Secretary for the Office of Affordable Housing Preservation further redelegate to each OAHP Director and OAHP Deputy Director, in the Field Offices and at Headquarters, the following authority:

(1) To modify and sign any documents necessary to perform enumerated functions and to waive any directive issued by OAHP that is not mandated by a statute or regulation.

(2) To administer the following provisions of MAHRA;

(a) To make eligibility determinations under sections 512 and 516 of MAHRA;

(b) In connection with a restructuring transaction, to make rent and/or mortgage restructuring determinations under sections 514, 515, 517, and 524; and

(c) To reject or hear and decide any appeal made to the Production Office under 24 CFR 401.645 or another permissible procedure.

(3) In connection with a restructuring transaction, to modify the principal balance, payments, interest rate, and amortization period and other terms of existing FHA-insured and HUD-held mortgages, including any HUD or Secretary-held subordinate debt encumbering or otherwise related to a project; and to issue restructuring commitments and closing documents relating to such debt.

(4) To issue HUD forms 92264 and 92264A upon approval of a restructuring plan.

(5) In connection with a restructuring transaction, to approve transfers of physical assets.

(6) In connection with a restructuring transaction, to approve environmental assessment and compliance findings for related laws report, HUD form 4128.1.

(7) To issue a commitment to insure and endorse for insurance a mortgage note given to refinance a HUD-insured or HUD-held mortgage, pursuant to section 223(a)(7) of the National Housing Act (12 U.S.C. 1715n).

(8) For qualified nonprofit entities acquiring projects that are the subject of a restructuring transaction, to modify, assign, or forgive debt created in the restructuring.

D. The Deputy Assistant Secretary for Multifamily Housing and the Associate Deputy Assistant Secretary for the Office of Affordable Housing preservation further redelegate to the Rehabilitation Escrow Administration Manager the following authority:

(1) To modify and sign any documents necessary to perform enumerated functions related to the rehabilitation needs of a project that was the subject of a restructuring transaction, and to waive any directive issued by OAHP that is not mandated by a statute or regulation.

(2) To administer escrow accounts and modify the agreement established under the restructuring transaction, for the purpose of addressing immediate and near- term rehabilitation needs of a project.

E. The Deputy Assistant Secretary for Multifamily Housing and the Associate Deputy Assistant Secretary for the Office of Affordable Housing Preservation further redelegate to the Bonds and Appeals Manager the following authority:

(1) To modify and sign any documents necessary to perform enumerated functions related to appeals under MAHRA and/or the regulations promulgated under MAHRA.

(2) To reject or hear and decide any appeal under MAHRA and/or the regulations promulgated under MAHRA, except for 24 CFR 401.645.

Section VIII. Authority Excepted

The authority redelegated in Section VII.A. through VII.E. does not include the authority to issue or to waive HUD regulations. The authority redelegated in Section VII.A. through VII. E. does not include the authority to sue or be sued.

Section IX. Further Redelegation

The authority redelegated in Section VII.A. through VII.E. may not be further redelegated.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 5, 2012.

Carol J. Galante,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2012–15071 Filed 6–19–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5557–D–06]

Delegations of Authority for the Office of Housing—Federal Housing Administration (FHA); Delegation of Authority for the Office of Healthcare Programs

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of Delegation of Authority.

SUMMARY: This document supersedes all previous delegations of authority and specifies the delegations and redelegations of authority for the Office of Healthcare Programs within the Office of Housing. The Office of Healthcare Programs is headed by the Deputy Assistant Secretary for Healthcare Programs and Associate Deputy Assistant Secretary for Healthcare Programs, who report directly to the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

DATES: *Effective Date:* June 5, 2012.

FOR FURTHER INFORMATION CONTACT: Ivy Jackson or John Whitehead, Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6264, Washington, DC 20410–8000, telephone number 202–708–0599. (This is not a toll-free number.) Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: This notice supersedes all previous delegations including the delegations and redelegations published in the **Federal Register** on October 12, 2006 (71 FR 60179), and those contained in memoranda signed by the FHA Commissioner and titled ''Redelegations for Sections 232 and 242 Programs,'' dated November 6, 2008, February 1, 2010, and April 20, 2010.

The Office of Healthcare Programs (OHP) is centrally organized and administered out of HUD Headquarters and headed by a Deputy Assistant Secretary. It includes managers and staff members outstationed to field locations. OHP reviews and approves mortgage insurance proposals for hospitals (Section 242 of the National Housing Act) and residential care facilities (Section 232 of the National Housing Act) and handles asset management and property disposition matters related to HUD's Section 232- and Section 242-insured portfolios. OHP also administers all matters under Title XI of the National Housing Act (mortgage insurance for group practice facilities), but this program is currently inactive. Prior to the creation of OHP, the Section 242 hospital program was administered by the Office of Insured Health Care Facilities (OIHCF), and the Section 232 residential care facilities program was administered by the Office of Multifamily Housing Programs (MHP). A 2008 realignment consolidated administration of HUD's health-care facilities programs under the Office of Insured Health Care Facilities (OIHCF), with some responsibilities remaining with MHP. Following approval of a reorganization in May 2010, the Office of Healthcare Programs came into existence and OIHCF ceased to exist. HUD determined that the reorganization was necessary because underwriting and oversight issues unique to health-care facilities were best handled by a specialized office with particular expertise in the health-care area.

There are three major program offices within OHP, each of which is headed by a Director who reports to the Deputy Assistant Secretary for Healthcare Programs and the Associate Deputy Assistant Secretary for Healthcare Programs. A general description of each program office appears below:

A. *Office of Hospital Facilities.* This office develops and implements policies and guidelines for the loan origination, asset management, and post-insurance activities related to Section 242 mortgage insurance for hospitals.

B. *Office of Residential Care Facilities.* This office develops and implements policies and guidelines for the loan origination, construction, asset management, and post-insurance activities related to Section 232 mortgage insurance for residential-care facilities. These facilities include nursing facilities, assisted living facilities, and board and care facilities.

C. *Office of Architecture and Engineering.* This office provides architectural and engineering support for the hospital program and as-needed consultation for the residential care facilities program. It develops and implements policies and guidelines for plans and specifications, construction contracts, construction monitoring, construction draws, and closeout of the facility construction. This office also provides professional consultation for hospital facilities, including site visits for those projects that are in financial distress.

The Office of Healthcare Programs is charged with carrying out duties of the Assistant Secretary and General Deputy Assistant Secretary for Housing, as they relate to healthcare facility programs set forth in HUD's governing legislation. These programs enable HUD, in concert with participants from the private and public sectors, to provide affordable capital financing for the construction, rehabilitation, refinancing, and purchase of health-care facilities. Under this delegation, the Assistant Secretary for Housing—Federal Housing Commissioner, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner, and Associate General Deputy Assistant Secretary for Housing redelegate broad program authority to the Deputy Assistant Secretary for Healthcare Programs and the Associate Deputy Assistant Secretary for Healthcare Programs. Characterizing the authority that is being redelegated in broad or general terms will enable the Deputy Assistant Secretary for Healthcare Programs and the Associate Deputy Assistant Secretary for Healthcare Programs to perform all functions necessary to accomplish health-care facility program tasks and objectives. The basic health-care program functions and a brief description of each are as follows:

1. *General Authority.* This authority allows Office of Healthcare Programs officials to sign any and all documents necessary to carry out business within their program jurisdictions. In addition, this authority allows such officials, when considering a proposal, to waive, for good cause and with written

justification any directives that are not mandated by statute or regulation.

2. *Production.* This function allows a manager with delegated authority to make all necessary determinations that relate to the FHA insurance application processing and underwriting process. The function begins with a pre-application or application for mortgage insurance and ends with the Department's endorsement of an insured mortgage and related documentation.

3. *Construction.* This function involves: the review and approval of plans and specifications and construction contracts, environmental review, the monitoring of construction progress and quality, the review and approval of requests for drawdown of mortgage proceeds as construction progresses, and project closeout at the conclusion of construction.

4. *Asset Management.* Functions carried out under this category involve HUD's continuing relationship with a mortgagee and a health-care facility after the facility has been added to the HUD portfolio through FHA mortgage insurance. Ongoing decision-making relates to an insured facility's financial strength, occupancy, utilization, operations (including changes in ownership, operator, or management entity), and compliance with its regulatory agreement from the time of occupancy through termination of insurance, with the goal being to identify problems that could lead to mortgage default and payment of an insurance claim, and to take actions to help the facility avoid mortgage default.

5. *Post-Insurance Functions.* Functions under this category involve the ongoing monitoring and ultimate disposition of Secretary-held mortgage notes. The purpose of these functions is to optimize recovery of losses from claims. Ongoing decision-making relates to a facility's financial strength, occupancy, utilization, operations (including changes in ownership, operator, or management entity, and changes in debt service via a note modification) and compliance with its regulatory agreement. Post-insurance functions include: deciding to offer a Secretary-held mortgage note for sale, coordinating details of the sale process with the Office of Finance and Budget, deciding whether or not to accept an offer from a prospective purchaser and deciding whether to foreclose on a Secretary-held mortgage, coordinating details of the property sale with the Multifamily Property Disposition Center, and deciding whether to accept an offer from a prospective purchaser.

Section A. Authority Delegated

The Assistant Secretary, the General Deputy Assistant Secretary, and the Associate General Deputy Assistant Secretary for Housing hereby delegate the following authorities: (1) to the Deputy Assistant Secretary for Healthcare Programs and the Associate Deputy Assistant Secretary for Healthcare Programs; and (2) through the above Deputy Assistant Secretary for Healthcare Programs and the Associate Deputy Assistant Secretary for Healthcare Programs, to the managers listed, subject to the limitations in Section B below.

Authority is delegated, on a nationwide basis, to take all actions necessary to conduct all health-care facility mortgage insurance programs, including, but not limited to, the exercise of the following functions:

1. General authority.
2. All production functions.
3. All construction functions.
4. All asset management functions.
5. All post-insurance functions.

Authority is found in Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d), which states: ''The Secretary may delegate any of his functions, powers, and duties to such officers and employees of the Department as he may designate, may authorize such successive redelegations of such functions, powers, and duties as he may deem desirable, and may make such rules and regulations as may be necessary to carry out his functions, powers, and duties.''

The authority delegated in Section A and redelegated in Section B below does not include authority to issue or waive regulations.

Section B. Authority to Redelegate

The Deputy Assistant Secretary for Healthcare Programs and the Associate Deputy Assistant Secretary for Healthcare Programs hereby redelegate the following authorities to the following managers:

A. Director, Office of Hospital Facilities

Authority is redelegated, on a nationwide basis, to take all actions necessary to conduct the hospital mortgage insurance program, in relation to the following functions:

1. General authority;
2. All production functions;
3. All asset management functions; and
4. All post-insurance functions.

Prior authorization required. Exercise of the following authorities is subject to prior authorization by the Deputy Assistant Secretary or the Associate Deputy Assistant Secretary for Healthcare Programs:

1. Issue waivers of directives (except those that restate regulatory or statutory authority);
2. Issue mortgage insurance commitments;
3. Issue a notice of violation under the terms of a regulatory agreement;
4. Authorize the acceleration of the principal debt of a mortgage;
5. Authorize a partial payment of claim;
6. Authorize the sale of a mortgage note;
7. Modify a Secretary-held note;
8. Authorize the sale of a HUD-owned hospital;
9. Authorize a change of ownership or merger of a portfolio hospital;
10. Approve loan covenants other than the standard covenants;
11. Authorize a portfolio hospital to pledge accounts receivable as collateral for non-FHA indebtedness;
12. Require a change of a hospital's governing board or management; and
13. Communicate a significant new policy or a significant change to established program policy.

Further redelegations. The Director, Office of Hospital Facilities, may redelegate to, or withdraw from, any subordinate Division Director, any of the authority delegated to the Director by this notice. Division Directors may further redelegate to, or withdraw from, any designated officials within their Divisions, any of the authority delegated to them.

B. Director, Office of Residential Care Facilities

Authority is redelegated, on a nationwide basis, to take all actions necessary to conduct the residential-care facilities mortgage insurance program, in relation to the following functions:

1. General authority;
2. All production functions;
3. All construction functions;
4. All asset management functions; and
5. All post-insurance functions.

Prior authorization required. Exercise of the following authorities is subject to prior authorization by the Deputy Assistant Secretary or the Associate Deputy Assistant Secretary for Healthcare Programs:

1. Authorize the acceleration of the principal debt of a mortgage;
2. Authorize a partial payment of claim;
3. Authorize the sale of a mortgage note;
4. Modify a Secretary-held note;

5. Authorize the sale of a HUD-owned residential care facility;

6. Approve a portfolio consisting of 10 or more facilities;

7. Approve change of ownership or operator for a portfolio of 10 or more facilities;

8. Approve a mortgage insurance commitment in excess of $50 million; and

9. Communicate a significant new policy or a significant change to established program policy.

Further redelegations. The Director, Office of Residential Care Facilities, may redelegate to, or withdraw from, any subordinate Division Director any of the authority delegated to the Director under this notice. Division Directors may further redelegate to, or withdraw from, any designated officials within their Divisions, any of the authority delegated to them.

C. Director and Deputy Director, Office of Architecture and Engineering

Authority is redelegated to take all actions necessary to conduct the construction functions for the hospital mortgage insurance program, and, when directed by the Deputy Assistant Secretary or the Associate Deputy Assistant Secretary for Healthcare Programs, on a case-by-case basis, for the residential care facility mortgage insurance program.

The Director, Office of Architecture and Engineering, may redelegate to, or withdraw from, any designated official within that Office, any of the authority delegated to the Director.

Section C. Authority Excepted

The authority delegated in Section A and redelegated in Section B, above, does not include authority to issue or waive regulations.

Section D. Authority Superseded

These redelegations supersede all prior delegations and redelegations with respect to health-care facilities, including, without limitation, those published in the **Federal Register** on October 12, 2006 (71 FR 60179) and memoranda signed by the FHA Commissioner and titled ''Redelegations for Sections 232 and 242 Programs,'' dated November 6, 2008, February 1, 2010, and April 20, 2010.

The Assistant Secretary for Housing—Federal Housing Commissioner, or the General Deputy Assistant Secretary for Housing—Federal Housing Commissioner, or the Associate General Deputy Assistant Secretary for Housing may revoke the authority authorized herein, in whole or part, at any time. Notice of any revocation will be published in the **Federal Register**.

Dated: June 5, 2012.

Carol J. Galante,

Acting Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 2012–15073 Filed 6–19–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5557–D–07]

Delegations of Authority for the Office of Housing—Federal Housing Administration (FHA), Redelegation of Authority to the Deputy Assistant Secretary for Risk Management and Regulatory Affairs

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of redelegations of authority.

SUMMARY: Elsewhere in today's **Federal Register,** HUD is publishing a delegation of authority by the Secretary of HUD to the Assistant Secretary for Housing—Federal Housing Commissioner, the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner, and the Associate General Deputy Assistant Secretary for Housing. This notice redelegates certain authority delegated to the Assistant Secretary for Housing—Federal Housing Commissioner (and to the other officials noted above), to: the Deputy Assistant Secretary for Risk Management and Regulatory Affairs, the Associate Deputy Assistant Secretary for Risk Management and Regulatory Affairs, the Associate Deputy Assistant Secretary for Risk Management and Assessment, and the Administrator of the Office of Manufactured Housing Programs.

DATES: *Effective Date:* June 5, 2012.

FOR FURTHER INFORMATION CONTACT: Office of the Associate General Deputy Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development, 451 Seventh Street SW., Room 9110, Washington, DC 20410–8000, phone number 202–708–2601. (This is not a toll-free number.) Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: The Office of the Assistant Secretary for Housing—Federal Housing Commissioner has undergone a reorganization since the issuance of a consolidated delegation of authority published in the **Federal Register** on October 12, 2006 (71 FR 60169). The reorganization created a new Office of Risk Management and Regulatory Affairs in July 2010 to address housing industry and consumer issues, as well as to provide a streamlined standardized response to help stabilize and monitor the housing market. The Office is described below. This notice redelegates authority to the Deputy Assistant Secretary for Risk Management and Regulatory Affairs, the Associate Deputy Assistant Secretary for Risk Management and Regulatory Affairs, the Associate Deputy Assistant Secretary for Risk Management and Assessment, and the Administrator of the Office of Manufactured Housing Programs.

Note that the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, approved July 21, 2010) transferred from the Department of Housing and Urban Development to the new Consumer Financial Protection Bureau all functions of HUD to carry out the Real Estate Settlement Procedures Act (RESPA) of 1974, the Secure and Fair Enforcement (SAFE) for Mortgage Licensing Act of 2008, and the Interstate Land Sales (ILS) Full Disclosure Act; the effective transfer date was July 21, 2011. Today's Notice includes redelegations for functions authorized under these acts, given that HUD may continue to exercise residual responsibilities after that date.

Section I. Deputy Assistant Secretary for Risk Management and Regulatory Affairs Organization

Three Offices report to the Deputy Assistant Secretary for Risk Management and Regulatory Affairs: The Office of Risk Management, the Office of Evaluation, and the Office of Manufactured Housing Programs. The following is a brief summary of the functions of these offices.

A. Office of Risk Management

The Office of Risk Management (ORM) assures that the Office of Housing is equipped to identify and manage credit and operational risk across the enterprise and within each Office within the Office of Housing. As such, ORM works across the enterprise and with program office staff to develop and identify the requisite policies, systems, and resources needed to support the Office of Housing's broader goals of expanding affordable housing and access to health-care facilities while striving to maintain the respective FHA insurance funds at or above prudent thresholds. ORM deploys resources to

monitor, evaluate and ensure that risk mandates are accomplished.

B. Office of Evaluation

The Office of Evaluation assesses the financial impact of new or revised HUD/FHA programs and policies; new or proposed legislation; and/or new or proposed directives, studies or rules of the Office of Management and Budget (OMB), the Government Accountability Office (GAO) the Department of the Treasury (Treasury), or other agencies. The Office of Evaluation is responsible for actuarial analyses and cash-flow projections of the FHA insurance funds and evaluates relationships between current market conditions and FHA program goals and objectives. The Office of Evaluation estimates the financial impact of policy changes or external factors on FHA programs. In addition, that Office conducts a quarterly analyses of economic developments and ongoing actuarial analyses of FHA's insurance funds.

C. Office of Manufactured Housing Programs

The Office of Manufactured Housing Programs regulates the design and construction of all manufactured housing in the United States and is responsible for ensuring that serious defects and imminent safety hazards noted in manufactured housing are tracked and corrected, pursuant to the National Manufactured Housing Construction and Safety Standards Act. That Office is responsible for, among other things, the administration of the Manufactured Housing Consensus Committee, a federal advisory committee; regulation and enforcement of the design and construction of manufactured homes according to Federal standards; the installation of manufactured homes according to the Model Installation Standards; the administration of the installation program; and the administration of the manufactured housing dispute resolution program.

In addition, the Office of Manufactured Housing Programs prescribes standards for design, construction, and alteration of structures for programs under the National Housing Act; approves or disapproves variances from the design and construction standards; evaluates and determines the technical suitability of housing products/materials; and issues engineering and technical bulletins governing the acceptability of housing system components, materials, and methods of contraction.

Section II. Risk Management—Authority Redelegated

A. General Authority

Authority is redelegated, in broad terms, to the Deputy Assistant Secretary for Risk Management and Regulatory Affairs, the Associate Deputy Assistant Secretary for Risk Management and Regulatory Affairs, and the Associate Deputy Assistant Secretary for Risk Management and Assessment to carry out, in concert with program offices, all risk management, analysis, and evaluation functions, including decisions and corrective measures related to risk assessment, risk management strategy, and risk governance policies.

B. Risk Management

The Deputy Assistant Secretary for Risk Management and Regulatory Affairs, Associate Deputy Assistant Secretary for Risk Management and Regulatory Affairs, and the Associate Deputy Assistant Secretary for Risk Management and Assessment are re-delegated authority to take all actions necessary to conduct risk management and risk assessment activities including, but not limited to, the authority necessary to:

(1) Recommend actions to support FHA's ability to reduce risk exposure to its insurance funds while meeting its housing mission and operating in compliance with statutory capital requirements;

(2) Promote transparency and comprehensive communication of FHA's risk profile by establishing reporting metrics for key constituents, both internal and external, in order to communicate, both qualitatively and quantitatively, FHA's risk levels, trends, priorities, risk mitigation activities, and impacts;

(3) Identify the policies and processes that are key drivers of risk via a structured risk identification framework: i.e., recommend risk mitigation strategies for FHA and specific program areas and provide independent oversight and assessment of risk remediation activities; provide input and guidance to program areas on key risk analytics, policies and practices, including, but not limited, to algorithms and underwriting used to identify, measure, and manage risk-related to endorsement and management of Single Family, Multifamily, and Healthcare programs, and collaborate with program areas regarding counterparty risk (lenders and servicers), portfolio asset management strategies, and enforcement practices to protect FHA's insurance funds;

(4) Design and maintain a comprehensive Risk Governance infrastructure, including implementing policies, processes, and committees to reduce risk exposure to the insurance funds; i.e., advise and provide oversight for the implementation of policies, processes, and committees that comprise the governance structure;

(5) Ensure the timely and proper conduct of statutorily mandated and other necessary risk analyses, including the annual actuarial study of the Mortgage Mutual Insurance Fund and front-end risk assessments (FERA) for new and high-impact programs and activities, in accordance with federal standards, and in concert with other Office of Housing offices; and

(6) Ensure that risks are measured, monitored, and managed according to an integrated framework across FHA and Office of Housing program areas.

Section III. Regulatory Affairs—Authority Redelegated

A. General Authority

Authority is redelegated in broad terms to the Deputy Assistant Secretary for Risk Management and Regulatory Affairs, the Associate Deputy Assistant Secretary for Risk Management and Regulatory Affairs, and the Administrator of the Office of Manufactured Housing Programs to carry out the functions and activities of the National Manufactured Housing Construction and Safety Standards Act of 1974. This redelegated authority includes that related to carrying out certain provisions of the National Housing Act. In addition, authority is redelegated in broad terms to the Deputy Assistant Secretary for Risk Management and Regulatory Affairs and the Associate Deputy Assistant Secretary for Risk Management and Assessment to perform any residual functions of the Real Estate Settlement Procedures Act, the Interstate Land Sales Full Disclosure Act, and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

B. Manufactured Housing Construction and Safety Standards Act

The Deputy Assistant Secretary for Risk Management and Regulatory Affairs, the Associate Deputy Assistant Secretary for Risk Management and Regulatory Affairs, and the Administrator of the Office of Manufactured Housing Programs are redelegated such authority as is necessary to carry out the duties and responsibilities of HUD as prescribed in the National Manufactured Housing Construction and Safety Standards Act

(the Act), including, but not limited to, the authority necessary to:

(1) Establish home constructions and safety standards; enter into contracts with an administering organization; adopt, revise, and interpret construction and safety standards; issue interpretative bulletins; and approve or reject proposed regulations or interpretative bulletins submitted by the Consensus Committee;

(2) Develop and establish model manufactured home installation standards;

(3) Submit cost or other information to the consensus committee for evaluation;

(4) Conduct research, testing, development, and training to carry out the Act;

(5) Advise, assist, and cooperate with other Federal agencies, and state and other public and private agencies in the planning and development of standards and methods for inspection and testing;

(6) Determine that any manufactured home does not conform to applicable Federal standards or contains a defect that constitutes an imminent safety hazard;

(7) Conduct inspections and investigations necessary to promulgate or enforce Federal standards under the Act; designate persons to enter an establishment to inspect; contract with state and local governments and private inspection organizations to carry out the functions under section 614 of the Act; to hold hearings, take testimony, and administer oaths and take other actions under section 614(c) of the Act;

(8) Enforce notification and correction of defects;

(9) Develop guidelines for a consumer's manual;

(10) Utilize the services, research, and testing facilities of public agencies and independent testing laboratories;

(11) Collect reasonable fees to carry out the responsibilities under the Act;

(12) Approve State plans for enforcement of standards;

(13) Establish and implement a dispute resolution program; and

(14) Make grants to States that have designated a State agency under section 623 of the Act.

C. National Housing Act Provisions

The Deputy Assistant Secretary for Risk Management and Regulatory Affairs and the Associate Deputy Assistant Secretary for Risk Management and Regulatory Affairs are redelegated such authority as is necessary to carry out certain duties and responsibilities prescribed in the National Housing Act (the NHA Act) (12 U.S.C. 1701 *et seq.*), as follows:

(1) Prescribe standards for designs, construction, and alteration of structures for programs (other than public housing programs) prescribed under the NHA Act;

(2) Approve or disapprove variances from the design or construction standards for all programs (other than public housing programs) under the NHA Act; and

(3) Evaluate and determine the technical suitability of housing products and materials under section 21 of the NHA Act, and to issue engineering and technical bulletins governing the acceptability of housing system components, materials, and methods of construction.

D. Real Estate Settlement Procedures Act (RESPA)

The Deputy Assistant Secretary for Risk Management and Regulatory Affairs and the Associate Deputy Assistant Secretary for Risk Management and Regulatory Affairs are redelegated such authority as is necessary to carry out any residual duties and responsibilities of HUD as remain, following the transfer of the Real Estate Settlement Procedures Act (RESPA) to the Consumer Financial Protection Bureau (CFPB).

E. Interstate Land Sales Full Disclosure Act

The Deputy Assistant Secretary for Risk Management and Regulatory Affairs and the Associate Deputy Assistant Secretary for Risk Management and Regulatory Affairs are redelegated such authority as is necessary to carry out any residual duties and responsibilities of HUD as remain after transfer of the Interstate Land Sales Full Disclosure Act to the CFPB.

F. Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE)

The Deputy Assistant Secretary for Risk Management and Regulatory Affairs and the Associate Deputy Assistant Secretary for Risk Management and Regulatory Affairs are redelegated such authority as is necessary to carry out any residual duties and responsibilities of HUD, as prescribed in the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, to the CFPB.

Section IV. Authority Excepted

The authority redelegated herein does not include the authority to:

(1) Issue or to waive regulations;

(2) Sue or be sued.

Section V. Further Redelegations

The authority redelegated by the Assistant Secretary for Housing to the Deputy Assistant Secretary for Risk Management and Regulatory Affairs, the Associate Deputy Assistant Secretary for Risk Management and Regulatory Affairs, the Associate Deputy Assistant Secretary for Risk Management and Assessment, and the Administrator of the Office of Manufactured Housing Programs may be redelegated.

Section VI. Revocation of Delegations

The Assistant Secretary for Housing-Federal Housing Commissioner, the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner, or the Associate General Deputy Assistant Secretary for Housing may, at any time, revoke any of the authority redelegated herein. Notice of any revocation will be published in the **Federal Register**. This redelegation of authority supersedes all prior redelegations of authority to the Deputy Assistant Secretary for Risk Management and Regulatory Affairs, the Associate Deputy Assistant Secretary for Risk Management and Regulatory Affairs, the Associate Deputy Assistant Secretary for Risk Management and Assessment, and the Administrator of the Office of Manufactured Housing Programs.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 5, 2012.

Carol J. Galante,

Acting Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 2012–15075 Filed 6–19–12; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5557–D–08]

Delegations of Authority for the Office of Housing—Federal Housing Administration (FHA); Redelegation of Authority Regarding Single Family Housing Programs

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of revocation and redelegation of authority.

SUMMARY: On September 15, 2006, the Assistant Secretary for Housing—Federal Housing Commissioner issued an up-to-date comprehensive delegation of authority for single family housing programs. This notice amends that

redelegation of authority to reflect changes that have occurred since that time.

DATES: *Effective Date:* June 5, 2012.

FOR FURTHER INFORMATION CONTACT: Wanda Sampedro, Special Assistant to the Deputy Assistant Secretary for the Office of Single Family Housing, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 9282, Washington, DC 20410, telephone 202–708–3175. (This is not a toll-free number). Persons with hearing or speech impairments may access this number by calling HUD's toll-free Federal Relay Service number at 800–877–8339.

SUPPLEMENTARY INFORMATION: Section I of this notice sets forth the organization of the Office of Single Family Housing. This material is basically the same as that which appeared in the comprehensive delegations of authority published on October 12, 2006 (71 FR 60173). However some wording has been changed to clarify the Single Family organization and functions.

On July 18, 2005, the Assistant Secretary issued a redelegation of authority to management and marketing contractors (M&Ms) to execute routine documents necessary for the management and sale of single-family properties acquired by HUD in connection with its Single Family Housing Mortgage Insurance Program. The notice of redelegation of authority was published on July 26, 2005, at 70 FR 43171 and was incorporated into the comprehensive redelegation of authority of October 2006 in Section III.Q. Management and Marketing (M&M) Contractors. This redelegation of authority is continued in this notice.

On September 17, 2003, the Assistant Secretary issued an unpublished redelegation of authority to certain staff in the Office of Housing's Caribbean Office enabling them to carry out duties in connection with the Single Family Property Disposition Program. In the usual course, these duties would be carried out by designated officials in the Atlanta, Georgia, Homeownership Center (HOC). However, local law in Puerto Rico requires HUD staff in the Caribbean Office to accept conveyances of title. Accordingly, the redelegation is again incorporated into the comprehensive redelegation of authority in Section III.S.

Accordingly, the notice of redelegation of authority for single family housing programs is amended and updated, as follows:

Section I. Single Family Housing Programs—Office of Housing Organization

A. Office of Single Family Housing—Headquarters

All Office of Single Family Housing managers, in Headquarters and the field, report to the Deputy Assistant Secretary for Single Family Housing and Associate Deputy Assistant Secretary for Single Family Housing. In Headquarters, there are three major single family housing offices, each of which are headed by a Director and are comprised of Divisions. These offices are the following:

The Office of Single Family Housing Program Development: This office is comprised of three divisions. The Home Mortgage Insurance Division is generally responsible for developing and implementing policies, procedures, and guidelines covering the pre-application through the final endorsement stage of FHA mortgage insurance cases, including mortgage loan origination and refinancing cases.

The Program Support Division is responsible for: Administering the Housing Counseling Program under section 106 of the Housing and Urban Development Act of 1968; administering FHA's nonprofit mortgagor discount sales and secondary financing programs; maintaining the Single Family Housing Web site; producing single family housing brochures; overseeing the marketing of single family housing programs; and providing a wide variety of technical assistance to the three offices within the Office of Single Family Housing.

The Home Valuation Policy Division is responsible for managing all single family property appraisal and valuation requirements. These functions include oversight and monitoring of appraisers and analyzing single family property valuation issues, including standards and policies associated with new construction and property rehabilitation, and all origination and several servicing policies for administering the home equity conversion mortgage program.

The Office of Single Family Asset Management: This office is comprised of two divisions. The first division, the National Servicing Center (NSC), serves as the operational arm of the Office of Single Family Asset Management. It provides centralized servicing, loss mitigation, and operations support for the FHA-insured mortgage portfolio from the point of loan endorsement through termination. The NSC has oversight responsibility for the FHA Loss Mitigation Program; for servicing Secretary-owned first and second mortgages; for providing default, foreclosure, and loss mitigation activity reporting and analyses; and for ranking and rating lender servicing and loss mitigation performance. The NSC works with mortgage servicers and homeowners to find solutions to avoid foreclosure of FHA-insured loans and provides direction and training to lenders and Housing Counseling Agencies, better enabling them to assist homeowners. Although it is a Headquarters Division, the NSC's staff is out-stationed to Oklahoma City and Tulsa, Oklahoma. The loan servicing and loss mitigation functions carried out by the NSC are not delegated to any field office.

The second division, the Asset Management and Disposition Division (AMDD), is responsible for establishing policy for the servicing of FHA loans, and the management and marketing of HUD-acquired single family properties. These policies are promulgated in the form of Regulations, Mortgagee Letters, and Housing Notices. The scope of these policies includes but is not limited to escrow requirements, pre-payments, loss mitigation, and mortgage insurance claims. AMDD is also responsible for operating HUD's mission programs.

The Office of Lender Activities and Program Compliance (OLAPC): This office consists of three divisions. Acting as the regulatory oversight and enforcement entity within the Office of Single Family Housing, OLAPC executes a three-part risk management strategy comprised of the following functions:

Evaluating—The Lender Approval and Recertification Division approves and recertifies qualified lenders to participate in FHA's mortgage insurance programs.

Monitoring—The Quality Assurance Division (QAD) directs operational, loan and institutional level risk analysis and review processes. QAD uses HUD's data systems to analyze and evaluate loans and mortgagee portfolios to identify performance problems that put the FHA insurance fund at risk.

Enforcement—The Mortgagee Review Board Division serves as staff for the Mortgagee Review Board, which takes administrative action against FHA-approved lenders when there is adequate evidence of serious violations in the origination, underwriting, or servicing of loans submitted for FHA insurance.

B. Single Family Housing—Field Office Structure

In order to maximize efficiencies and empower people and communities, the

Office of Single Family Housing undertook a major field reorganization several years ago. Today, the Office of Single Family Housing has Homeownership Centers (HOCs) in four locations: Atlanta, Georgia; Denver, Colorado; Philadelphia, Pennsylvania; and Santa Ana, California. These HOCs are generally responsible for the processing of cases within their respective geographic jurisdictions, but some monitoring and review processes are workload balanced across jurisdictions. In addition, Office of Single Family Housing employees are out-stationed to locations throughout the United States. Among other things, these employees work within local communities to perform marketing and outreach activities to ensure that the public is aware of and has access to Office of Housing programs. Program support employees evaluate and provide technical assistance to HUD-approved housing counseling agencies. Out-stationed employees also perform some monitoring and review processes.

A uniform structure applies to all of the HOCs. The highest-ranking official in the HOC is the HOC Director, who is assisted by the HOC Deputy Director. Functions performed by HOC staff are distributed, according to type (e.g., production, quality assurance, etc.), among five Divisions, each of which is headed by a Division Director. The five HOC Divisions are titled:

(1) Processing and Underwriting;
(2) Quality Assurance;
(3) Program Support;
(4) Real Estate Owned; and
(5) Operations and Customer Service.

Division Directors report to the HOC Director and Deputy Director. (As is the case in Headquarters, all staff report to the Deputy Assistant Secretary for Single Family Housing and the Associate Deputy Assistant Secretary for Single Family Housing.) The chart below identifies each HOC and its geographic jurisdiction.

Atlanta Homeownership Center
Atlanta
Jackson
Jacksonville
Knoxville
Greensboro
Indianapolis
Chicago
Orlando
Tampa
Springfield
Memphis
Nashville
Birmingham
Columbia
Miami
Louisville
The Caribbean

Denver Homeownership Center
Denver
Casper
Salt Lake City
Des Moines
St. Louis
Oklahoma City
Omaha
Albuquerque
Helena
San Antonio
Tulsa
New Orleans
Shreveport
Fort Worth
Fargo
Sioux Falls
Little Rock
Houston
Kansas City
Lubbock
Dallas
Milwaukee
Minneapolis

Philadelphia Homeownership Center
Philadelphia
Albany
New York
Providence
Columbus
Detroit
Syracuse
Cincinnati
Camden
Buffalo
Burlington
Washington, DC
Cleveland
Grand Rapids
Boston
Bangor
Pittsburgh
Richmond
Flint
Manchester
Charleston
Hartford
Baltimore
Wilmington
Newark

Santa Ana Homeownership Center
Santa Ana
Fresno
Honolulu
Las Vegas
Los Angeles
Phoenix
Reno
Sacramento
San Diego
San Francisco
Tucson
Seattle
Anchorage
Boise
Portland
Spokane

Section II. Single Family Programs—Functions

The Office of Single Family Housing is charged with carrying out duties of the Assistant Secretary, General Deputy Assistant Secretary and Associate General Deputy Assistant Secretary for Housing as they relate to single family housing programs set forth in the National Housing Act and other legislation. This broad range of programs enables HUD, in concert with program participants in the private and public sectors, to provide safe, decent, and affordable single family housing to millions of American families.

Under this delegation, the Assistant Secretary for Housing, General Deputy Assistant Secretary for Housing and Associate General Deputy Assistant Secretary for Housing redelegate broad program authority to the Deputy Assistant Secretary for Single Family Housing and the Associate Deputy Assistant Secretary for Single Family Housing and commensurate with their respective duties, Directors in Headquarters and in the field.

Characterizing the redelegated authority in broad or generic terms will enable the above Deputy Assistant Secretary for Single Family Housing and Associate Deputy Assistant Secretary for Single Family Housing, and Directors in Headquarters and the field, to perform all functions necessary to accomplish single family housing program tasks and objectives.

In some past delegation notices, HUD has set forth, in ''laundry list'' fashion the detailed functions carried out by managers under generic function headings. However, publishing detailed lists has proven problematic, as some listed items become obsolete over time, while other functions are omitted through oversight. Conversely, this delegation sets forth functions in generic terms, while the preamble provides insights into the nature of the work performed by managers with delegated authority under each category. The basic single family housing program functions and a brief description of each are as follows:

A. General Authority

This authority allows managers to sign any and all documents necessary to carry out the business within their program and geographical jurisdictions. In addition, it allows managers, when considering a proposal, to waive any directives not mandated by statute or regulation for good cause and with a written justification.

B. Production

This function allows a manager with delegated authority to make all necessary determinations that relate to the insured mortgage process. Essentially, this category of functions begins with a proposal to insure a home mortgage and ends with the Department's endorsement of an insured mortgage. For all insurance programs, it includes, but is not limited to, such activities as approving direct endorsement lenders' and monitoring contract reviews; maintaining rosters and other lists of appraisers, inspectors, and lenders; performing underwriting reviews for mortgage credit; performing appraisal reviews; performing architectural field reviews; and setting mortgage limits.

C. Servicing and Loss Mitigation

Servicing and Loss Mitigation functions are intended to ensure the servicing of the Secretary-held mortgage portfolio; partial claims; the monitoring of FHA servicers' use of loss mitigation; and, timely reporting of defaulted, FHA-insured loans. Additional responsibilities include: writing off or compromising principal debt, up to a maximum of $100,000; providing on-site and off-site loss mitigation training to lenders, housing counseling agencies, and other FHA program offices within HUD; administering the Home Equity Conversion Mortgage (HECM) program; operating a nationwide call center to respond to questions concerning loss mitigation and foreclosure relief programs; and supporting the Department's endeavor against predatory lending practices.

D. Quality Assurance

Quality assurance functions are intended to ensure that an FHA lender is in compliance with FHA lending requirements and procedures. Responsibilities include targeting lenders for review, conducting the Credit Watch Termination Initiative to identify and take action against poorly performing lenders, and administering the Neighborhood Watch Early Warning System, a web-based monitoring tool that allows HUD staff, lenders, appraisers, concerned citizens and other interested parties to monitor loan activity in areas as large as the United States or as small as a local zip code. These mechanisms are used to manage FHA's counterparty risk and mitigate losses to FHA's insurance funds.

E. Lender Approval and Recertification

Lender approval and recertification functions are the means by which FHA vets its lender partners and approves them for initial and continuing participation in FHA programs. Additional responsibilities include the management of HUD's Institution Master File, which records all relevant data for FHA-approved lenders and supplies lender data to more than 20 of FHA's key data systems and the administration of the Lender Assessment Subsystem for purposes of electronic submission and storage of the annual audit reports required of lenders seeking renewal of their FHA lender approval.

F. Enforcement

Enforcement functions protect FHA and its mortgage insurance funds from fraud and program abuse, and encourage program compliance by FHA-approved lenders. Via the imposition of civil money penalties and administrative sanctions against FHA approved lenders and mortgagees who knowingly and materially violate FHA program statutes, regulations and handbook requirements, FHA ensures compliance with HUD requirements and protects FHA's insurance funds from unwarranted risks and losses.

G. Grants

In any given year Congress may authorize funds for grant programs. The Assistant Secretary is the Grant Officer and thus the sole official responsible for making grantee selections. Grant functions include developing criteria for grant applications, rating and ranking proposals, and selecting government technical representatives to oversee performance under the grant contracts. Once a grant is awarded, functions include monitoring a grantee's compliance with the agreement, modifying a grant, terminating a grant for non-compliance, and closing out a grant in the usual course. The Assistant Secretary retains and does not delegate the authority of the Grant Officer.

H. Program Demonstrations

Periodically, Congress enacts legislation authorizing HUD to conduct a program on a demonstration basis. The purpose of the demonstration is essential to test the viability of a new program or product on a limited basis, e.g., by geography, case volume, or time. Functions related to demonstration programs include developing program criteria, implementing the program, monitoring activities and results, preparing any required reports to the Congress, and closing out the demonstration program.

I. Property Disposition

Section 204(g) of the National Housing Act (12 U.S.C. 1710) addresses the management and disposition of HUD-acquired single family properties. HUD's implementing regulations are found in 24 CFR part 291, entitled *Disposition of HUD-acquired single family property.* Under these statutory and regulatory authorities, HUD is charged with implementing a program of sales of HUD-acquired properties, along with appropriate credit terms and standards to be used in carrying out the program. Beginning with this notice, the Assistant Secretary redelegates the authority under 24 CFR 291.210(c), entitled *Direct Sales to individuals or entities,* to the Deputy Assistant Secretary for Single Family Housing.

Most of HUD's single family property disposition functions occur after HUD has acquired title to a property; some, however, occur during the pre-acquisition period. Principal disposition functions include, but are not limited to:

(1) Oversight monitoring,

(2) Mortgage compliance management,

(3) Field service management, and

(4) Asset management.

J. Suspensions, Debarments and Limited Denials of Participation

A participant or contractor or affiliate, other than a mortgagee, who fails to comply with HUD program regulations, rules, and/or procedures, can be denied the right to participate in a HUD program or programs. Procedures governing the nature and scope of proceedings for the issuance of a suspension, debarment or limited denial of participation are set forth in 2 CFR part 2424 and 2 CFR part 180. Only certain officials may issue such limited denials of participation pursuant to the process in the regulations. [**Note:** FHA-approved mortgagees are subject to an independent sanction process set forth in 24 CFR part 25.]

Section III. Single Family Programs—Authority Redelegated

As described in the paragraph that follows this one, the Assistant Secretary and the General Deputy Assistant Secretary and the Associate General Deputy Assistant Secretary retain and redelegate the following power and authority: (1) To the Deputy Assistant Secretary for Single Family Housing and Associate Deputy Assistant Secretary for Single Family Housing and (2) through the above Deputy Assistant Secretary and Associate Deputy Assistant Secretary, to the Headquarters Office Directors and Headquarters Deputy

Office Directors listed below, and (3) through the Headquarters Single Family Office Directors and Deputy Office Directors, to the Headquarters and Field Office managers, and certain other officials;

A. Deputy Assistant Secretary and Associate Deputy Assistant Secretary, Office of Single Family Housing

Authority is redelegated, on a nationwide basis, to take all actions necessary to the conduct of all Single Family Housing programs, including, but not limited to, the exercise of the following functions:

1. The general power to sign any documents necessary to perform enumerated functions, and to waive any directive that is not mandated by a statute or regulation;

2. All production functions related to mortgage insurance, grant, or other programs;

3. All loan servicing and loss mitigation functions, including the authority to act as a claims collection officer and to write off or compromise debt up to $100,000;

4. All quality assurance functions;

5. All functions necessary to administer grants and cooperative agreements awarded by the Assistant Secretary. However, noncompetitive contract awards proposed by assistance recipients subject to the administrative requirements for grants and cooperative agreements at 24 CFR part 85 may only be approved by the Assistant Secretary;

6. All functions necessary to carry out a program conducted on a demonstration basis;

7. All property disposition functions

8. Authority to conduct hearings concerning a lender or program participant's participation in HUD programs, and to issue (a) limited denials of participation, and (b) final debarment decisions, where a participant has elected not to contest the notice of proposed debarment of the Assistant Secretary; and

9. Authority to perform all source selection official duties in connection with Single Family Housing procurement actions.

B. Director and Deputy Director, Office of Single Family Housing Program Development

Authority is redelegated, on a nationwide basis, to take all actions necessary to the conduct of single family housing programs, in relation to the following functions:

1. The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by a statute or regulation;

2. All production functions related to mortgage insurance, grant, or other programs;

3. All functions necessary to carry out a cooperative agreement or competitive or non-competitive grant program, except for making grantee selections and approving recipient noncompetitive contracts; and

4. All functions necessary to carry out a program conducted on a demonstration basis.

C. Director, Home Mortgage Insurance Division, Office of Single Family Housing Program Development

Authority is redelegated, on a nationwide basis, to take all actions necessary to the conduct of single family housing programs, in relation to the following functions:

1. The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by a statute or regulation;

2. All production functions related to mortgage insurance, grant, or other programs; and

3. All functions necessary to carry out a program conducted on a demonstration basis.

D. Director, Program Support Division, Office of Single Family Housing Program Development

Authority is redelegated, on a nationwide basis, to take all actions and to perform all functions necessary to the conduct of the single family housing programs as follows:

1. The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by statute or regulation;

2. All functions necessary to carry out a cooperative agreement, competitive or non-competitive grant program except for making grantee selections and approving recipient noncompetitive contracts; and

3. All functions necessary to carry out a program conducted on a demonstration basis.

E. Director, Home Valuation Policy Division, Office of Single Family Housing Program Development

Authority is redelegated, on a nationwide basis, to take all actions and to perform all functions necessary to the conduct of the single family housing programs, as follows:

1. The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by statute or regulation;

2. All production functions related to mortgage insurance, grant, or other programs; and

3. All functions necessary to carry out a program conducted on a demonstration basis.

F. Director and Deputy Director, Office of Single Family Asset Management

Authority is redelegated, on a nationwide basis, to take all actions necessary to the conduct of single family housing programs, in relation to the following functions:

1. The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by statute or regulation;

2. Loan servicing and loss mitigation functions, including the authority to act as a claims collection officer and to write off or compromise debt up to $100,000;

3. All property disposition functions, other than:

a. Authorizing direct sales under 24 CFR 291.210(c), unless the sale involves authorizing or originating, but not terminating, a PIH–REO agreement, which may be exercised; and

b. Approving and executing an original Asset Control Area (ACA) agreement (as opposed to an extension agreement), terminating an ACA agreement, and terminating an ACA participant's approval to participate in the ACA program; and

4. All functions necessary to carry out a program conducted on a demonstration basis.

G. Director, Single Family Servicing and Loss Mitigation Division, Office of Single Family Asset Management

Authority is redelegated, on a nationwide basis, to take all actions necessary to the conduct of single family housing programs in relation to the following functions:

1. The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by statute or regulations; and

2. All loan servicing and loss mitigation functions, including the authority to act as a claims collection officer and to write off or compromise debt up to $100,000.

H. Director, Asset Management and Property Disposition Division, Office of Single Family Asset Management

Authority is redelegated, on a nationwide basis, to take all actions necessary to the conduct of single

family housing programs in relation to the following functions:

1. The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by statute or regulation;

2. All property disposition functions other than authorizing direct sales under 24 CFR 291.210(c); and

3. All functions necessary to carry out a program conducted on a demonstration basis.

I. Director and Deputy Director, Office of Lender Activities and Program Compliance

Authority is redelegated, on a nationwide basis, to take all actions necessary to the conduct of single family housing programs in relation to the following functions:

1. The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by statute or regulation;

2. All quality assurance functions, including lender approval, re-certification, and program compliance functions;

3. Authority to conduct Credit Watch informal hearings concerning a lender's participation in HUD programs;

4. All functions necessary to carry out a program conducted on a demonstration basis.

J. Director, Lender Approval and Re-Certification Division, Office of Lender Activities and Program Compliance

Authority is redelegated, on a nationwide basis, to take all actions necessary to the conduct of single family housing programs, in relation to the following functions:

1. The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by statute or regulation; and

2. All functions related to approving and re-certifying FHA lenders.

K. Director, Quality Assurance Division, Office of Lender Activities and Program Compliance

Authority is redelegated, on a nationwide basis, to take all actions necessary to the conduct of single family housing programs, in relation to the following functions:

1. The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by statute or regulation;

2. Monitor lender performance and default and claim rates and to enter into indemnification agreements; and

3. All quality assurance functions related to program compliance by approved FHA lenders;

4. Authority to refer for suspension and proposed debarment.

L. Director, Mortgagee Review Board Division, Office of Lender Activities and Program Compliance

Authority is redelegated, on a nationwide basis, to take all actions necessary to the conduct of single family housing programs, in relation to the following functions:

1. The general power to sign any documents necessary to perform enumerated functions; and

2. All enforcement functions related to program compliance by FHA-approved lenders.

M. Homeownership Center—Director and Deputy Director

Authority is redelegated, within their respective jurisdictions, to take all actions necessary to the conduct of all single family housing programs including, but not limited to, the exercise of the following functions:

1. The general power to sign any documents necessary to perform enumerated functions, and to waive any directive that is not mandated by a statute or regulation;

2. All production functions related to mortgage insurance, grant, or other programs;

3. Monitoring of lender performance and default and claim rates and the entering into of indemnification agreements;

4. All functions necessary to carry out a cooperative agreement, competitive or non-competitive grant program, except for making grantee selections and approving recipient noncompetitive contracts;

5. All functions necessary to carry out a program conducted on a demonstration basis;

6. All property disposition functions other than authorizing direct sales under 24 CFR 291.210(c);

7. Authority to issue limited denials of participation;

8. Authority to refer for suspension and proposed debarment;

9. Authority pursuant to 24 CFR 200.204(a)(2)(iii) to administer the appeals process in connection with the removal of an appraiser from the appraiser roster and to issue a final decision concerning an appraisers removal from the roster; and

10. Authority to perform source selection official duties in connection with field-office based single family housing procurement actions, provided that the (a) contract amount is less than $10 million, and (b) authority is exercised only by the HOC Director.

N. Homeownership Center—Processing and Underwriting Division Director

Authority is redelegated, within their respective jurisdictions, to take all actions necessary to the conduct of all single family housing programs including, but not limited to, the exercise of the following functions:

1. The general power to sign any documents necessary to perform enumerated functions but not to issue waivers of directives;

2. All production functions related to mortgage insurance, grant, or other programs;

3. All functions necessary to carry out a program conducted on a demonstration basis; and

4. Authority pursuant to 24 CFR 200.204(a)(2)(iii) to issue the written notice of proposed roster removal to an appraiser.

O. Homeownership Center—Quality Assurance Division Director

Authority is redelegated, within their respective jurisdictions, to take all actions necessary to the conduct of all single family housing programs including, but not limited to, the exercise of the following functions:

1. The general power to sign any documents necessary to perform enumerated functions but not to issue waivers of directives; and

2. Monitor lender performance and default and claim rates and to enter into indemnification agreements.

3. Authority to refer for suspension and proposed debarment.

P. Homeownership Center—Program Support Division Director

Authority is redelegated, within their respective jurisdictions, to take all actions necessary to the conduct of all single family housing programs including, but not limited to, the exercise of the following functions:

1. The general power to sign any documents to perform enumerated functions but not to issue waivers of directives;

2. All functions necessary to carry out a cooperative agreement, competitive or non-competitive grant program, except for making grantee selections and approving recipient noncompetitive contracts; and

3. All functions necessary to carry out a program conducted on a demonstration basis.

Q. Homeownership Center—Real Estate Owned Division Director

Authority is redelegated, within their respective jurisdictions, to take all

actions necessary to the conduct of all single family housing programs including, but not limited to, the exercise of the following functions:

1. The general power to sign any documents necessary to perform enumerated functions but not to issue waivers of directives;

2. All property disposition functions other than authorizing direct sales under 24 CFR 291.210(c); and

3. All functions necessary to carry out a program conducted on a demonstration basis.

R. Particular Management and Marketing (M&M) Contractor Officials

Authority to execute all documents necessary in connection with the management and sale of residential real property acquired by HUD under its insured mortgage and asset management and disposition programs, excluding indemnification agreements, but including the authority to acknowledge, seal, and deliver any agreements of sale, special warranty deeds, form HUD–1 Settlement Statements, and any other instrument that may be necessary in connection with property management and sales on behalf of the Department, is redelegated to certain principals and/or officers of HUD's M&Ms whose identity will be maintained at its Web site located at *www.hud.gov/offices/hsg/sfh//reo/reo_home.cfm.*

S. Supervisory Housing Program Specialist, Office of Single Family Housing's Caribbean Office

1. The general power to sign any documents necessary to perform the property disposition function identified immediately below and to waive any directive that is not mandated by statute or regulation; and

2. The authority to accept conveyances of title to the Secretary of one- to- four unit properties.

Section IV. Authority Excepted

The authority redelegated in Section III.A through S does not include authority to issue or waive regulations.

Section V. Further Redelegations

The authority redelegated by the Assistant Secretary for Housing-Federal Housing Commissioner, the General Deputy Assistant Secretary-Deputy Federal Housing Commissioner and the associate General Deputy Assistant Secretary for Housing may not be further redelegated by the officials identified in Section III.A through S.

Section VI. Revocation of Delegations

All prior redelegations issued by the Assistant Secretary for Housing to staff in the Office of Single Family Housing are hereby superseded. The Assistant Secretary for Housing-Federal Housing Commissioner, the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner and the Associate General Deputy Assistant Secretary for Housing may, at any time, revoke any of the authority redelegated in this notice. Revocation shall be effective upon the date of removal. With respect to the officials identified in Section R, revocation shall be effective upon removal of the affected principal or officer's name from the Web site referenced in Section R. Notice of any revocation will be published in the **Federal Register**.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 5, 2012.

Carol J. Galante,

Acting Assistant Secretary for Housing-Federal Housing Commissioner.

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S. 292/P.L. 112–133

Salmon Lake Land Selection Resolution Act (June 15, 2012; 126 Stat. 380)

S. 363/P.L. 112–134

To authorize the Secretary of Commerce to convey property of the National Oceanic and Atmospheric Administration to the City of Pascagoula, Mississippi, and for other purposes. (June 15, 2012; 126 Stat. 382)

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